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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1973

No. 73-1865

SHAWNEE PLASTICS, INC.,
Petitioner (Respondent below)

— *vs* —

NATIONAL LABOR RELATIONS BOARD,
Respondent (Petitioner below)

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT AND APPENDIX A AND B

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II. The Court below erroneously and unconstitutionally refused to set aside a certification election or to remand this matter for a hearing relating to objections filed by Petitioner to a certification election in light of this Court's decision in *N.L.R.B. v. Savair Manufacturing Co.*, 94 S. Ct. 495 495 (No. 72-1231 decided December 17, 1973) thereby depriving Petitioner's employees of their rights under Sections 7 and 9 of the National Labor Relations Act. 29 U.S.C. 157, 159 13

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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1973

No. _____

SHAWNEE PLASTICS, INC.
Petitioner (Respondent below)

— vs —

NATIONAL LABOR RELATIONS BOARD,
Respondent (Petitioner below)

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The Petitioner, Shawnee Plastics, Inc. (hereafter referred to as "Shawnee") respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit entered in this proceeding on January 22, 1974.

OPINION BELOW

The opinion of the Court of Appeals is not as yet reported and is printed in Appendix A annexed hereto.

JURISDICTION

The judgment of the Court of Appeals was entered on January 22, 1974. A petition for rehearing was denied on March 14, 1974 and an order entered on May 29, 1974 staying the mandate in this case for thirty (30) days from said date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the Court below erroneously and unconstitutionally reviewed the record in the instant case by application of an "arbitrary and capricious" standard as opposed to the standard established under Section 10(e) of the National Labor Relations Act, 29 U.S.C. 160(e) which is "substantial evidence on the record considered as a whole."

2. Whether the Court below erroneously and unconstitutionally refused to set aside a certification election or to remand this matter for a hearing relating to objections filed by Petitioner to the certification election in light of this Court's decision in *N.L.R.B. v. Savair Manufacturing Co.*, 94 S. Ct. 495 (No. 72-1231 decided December 17, 1973) thereby depriving Petitioner's employees of their rights under Sections 7 and 9 of the National Labor Relations Act, 29 U.S.C. 157.

CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED

The pertinent constitutional provision involved is as follows:

". . . nor shall any person . . . be deprived of life, liberty or property, without due process of law; . . ."

The statute involved is the National Labor Relations Act, as amended, and more specifically, Sections 7, 9 and 10 of this Act, 29 U.S.C. 157, 159, 160, the applicable parts of which are are follows:

"Text of Labor Management Relations Act, 1947
as amended by Public Law 86-257, 1959
(Public Law 101-80th Congress)

RIGHTS OF EMPLOYEES

Sec. 7. Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3).

* * * * *

REPRESENTATIVES AND ELECTION

Sec. 9 * * * * *

(d) Whenever an order of the board made pursuant to Section 10(c) is based in whole or in part upon

facts certified following an investigation pursuant to subsection (c) of this section and there is a petition for enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under Section 10(e) or 10(f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript."

* * * * *

PREVENTION OF UNFAIR LABOR PRACTICES

Sec. 10 * * * * *

(b) * * * * * Any such proceeding (involving issuance of a complaint of unfair labor practices) shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States under the rules of civil procedure for the district courts of the United States. . . .

(e) * * * * * (For purposes of judicial review of Board orders) The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive."

STATEMENT

Petitioner operates a plant in Kuttawa, Kentucky, where it engages in the production of decorative plastic products and related items. (Appendix B 35) On November 23, 1970 a petition for a Board conducted

election was filed in Case No. 9-RC-8823 by the United Auto Workers (U.A.W.) for certification as bargaining representative of Petitioner's employees. An election was held and the U.A.W. won the election. On January 18, 1971 Petitioner filed objections to the election with the Board, asserting that the conduct of the two unions involved in the election (in addition to the U.A.W., the International Association of Machinists (I.A.M.) was on the ballot) prevent a fair and lawful election. The Board through its local Regional Office investigated the matter and issued a decision recommending to the Board itself that the objections be overruled in their entirety and that a Certification of Representative be issued. Petitioner filed timely exceptions to this decision, and after review by the Board, the decision of the Regional Office was affirmed. Also, a motion to reconsider this ruling was denied.

At no point in the above was Petitioner afforded an opportunity for an evidentiary hearing. Thereafter, Petitioner refused to comply with the Board's certification and this proceeding was begun in the form of an unfair labor practice charge filed by the U.A.W. in Case No. 9-CA-6859. After the issuance of a complaint and the filing of pleadings, Counsel for the General Counsel of the Board moved for summary judgment. Without granting a hearing on Petitioner's Objections and Response to the motion for summary judgment, the Board granted the motion and on a petition for enforcement of this order the Court below granted enforcement. The decision of the Court below indicated that matters relating to objections involved a "great deal of discretion" on the part of the Board and that its decision in such cases will not be set aside unless

"arbitrary and capricious," and that no hearing should be granted unless objections raise "substantial and material issues of fact." The evidence submitted by Petitioner in support of its Objections and Response to the Board's Motion for Summary judgment were found by the Court below to be "ambiguous, based on hearsay and self-serving declarations. They do not, in our judgment, allege facts which if proven would be cause for setting aside an election." Appendix A, pp. 2-5)

By way of statements or material circulated by the unions involved in the matter below, Petitioner submitted the following to the Board in support of its Objections and by way of Response to the Motion for Summary Judgment:

1. **Election day conduct**: Throughout Petitioner's plant on election day, unknown persons had plastered decals bearing the inscription "Vote UAW." This was also done in the area where the election was held—the polling area—and the attempts by Petitioner to remove these decals was not entirely successful, in that the imprint of the decals on a clock located in the polling area could not be removed. (Appendix B, p. 84 and exhibits attached) On the morning of the election the mother of an office employee of the Petitioner, who worked in the plant and was an eligible voter, was forced to wear a union sticker. (Appendix B, p. 96) As employees entered the plant on election day, several persons, both employees and non-employees were subjected to similar conduct. Appendix B, p. 109)

2. **Threats**: One employee was told in December of 1970 that because she had refused to sign a union card

and wear a union button when the union came in, and it was going to come in, things would be "hard" on her. (Appendix B, p. 97) Another employee stated that she had been mentioned as another employee who would be subjected to similar treatment. (Appendix B, p. 98) Another employee stated she had learned in the shop that somoene was threatened. (Appendix A, p. 91) Prior to the election an employee was threatened by a union agent while he was driving onto Petitioner's premises with "You'd better remember us, little fella, or we are going to remember you." This employee also received phone calls relaying threats of "something" happening to him or a member of his family if he did not support a union. (Appendix B, p. 94; p. 32; p. 38; p. 44; p. 94; p. 98; p. 125) On the Sunday before the election, held on the following Thursday, a supervisor at Petitioner received phone calls from employees, stating they would not give their names for fear of reprisals and that they had been told by the UAW it would know how employees voted in the election, and that employees refusing to wear union buttons and vote for the UAW, once it got in they would lose their jobs. Appendix B, pp. 132-33) These threats continued to the day of the election. Reports were received that any employee who "talked" about what went on at Petitioner before the election might be killed; and on elecday day the threat with reference to job loss for not voting for the UAW was repeated (Appendix B, p. 132)

3. **Literature and Misrepresentations:** The UAW stated in a handbill that it took a two-thirds vote to authorize a strike, when in fact the two-thirds vote is of those present at the meeting at which the vote is to be held, yet the UAW spoke in terms of "two-thirds of the workers." (Appendix B, p. 112; 106) One of the

unions (IAM) circulated a cartoon indicating, at least, that the wrong choice of a union might result in plant closure. Appendix B, p. 113) This union also sent a letter to all employees, indicating the rights of employees to join and support a union, but omitting therefrom any mention of the employees' rights to refrain from such activity. (Appendix B, p. 114) The UAW stated in its literature that its dues are $5.00 per month, or two hours pay, while its own publication indicated because of strike problems elsewhere, dues, regardless of plant, were to rise from the above to four hours pay. (Appendix B, p. 123 should be compared with Appendix B, p. 118)

4. **Fee Waivers (Misrepresentations)**: In a letter sent to all employees it was stated no employee would pay dues until after a contract was negotiated, the results of which would be "increased wages and more benefits and it won't have to cost you a cent in UAW dues." This letter also stated that "any worker in the plant at the time of the election will be exempt from an initiation fee." (Appendix B, p. 124) This letter did not define what the obligation of new employees would be and the authenticity of the waiver as to employees in the plant at the time of the election is disproven, i.e., the waiver was false. (Appendix B, p. 91; p. 95; p. 97; p. 98; p. 124)

5. **Monetary Inducements**: An employee stated as follows: "Employees who passed out union literature said the U.A.W. paid them to work for it. I don't know how much they got paid." (Appendix B, p. 92) Statements indicate payments in the amount of $100.00 were made to eleven employees of the Petitioner. (Appendix B, p. 100; p. 102; p. 105)

REASONS FOR GRANTING THE WRIT

I.

THE COURT BELOW ERRONEOUSLY AND UNCONSTITUTIONALLY REVIEWED THE RECORD IN THE INSTANT CASE BY APPLICATION OF AN "ARBITRARY AND CAPRICIOUS" STANDARD AS OPPOSED TO THE STANDARD ESTABLISHED UNDER SECTION 10(e) OF THE NATIONAL LABOR RELATIONS ACT, 29 U.S.C. 160(e) WHICH IS "SUBSTANTIAL EVIDENCE ON THE RECORD CONSIDERED AS A WHOLE."

The Court below granted enforcement of the Board's order in this case in the main because of the following: "The question now before us is whether the action of the Board in issuing a bargaining order without granting a hearing to the respondent on its objections, either in the representation case or in the unfair labor case now under consideration, was arbitrary and capricious." (Appendix A, p. 5) The National Labor Relations Act, however, only mentions a standard of review before the Courts of Appeals as "substantial evidence on the record considered as a whole," 29 U.S.C. 160(e) and this Court has made the following observation:

> "The Board's rules make clear that the regional director is required to follow the same rules as the Board respecting fact finding. The regional director's determination if adopted by the trial examiner in the unfair labor practice proceeding accompanies the case both to the Board and to

the Court of Appeals. In the present case the Court of Appeals concluded that the Board's order was supported by 'substantial evidence'."

* * * * *

"fn. 12. There is no different standard of review prescribed by the Administrative Procedure Act, § 706 (1964 ed. Supp. V) See *Universal Camera Corp. v. N.L.R.B.* 340 U.S. 474, 71 S. Ct. 456, 95 L. Ed. 456." *Magnesium Casting Co. v. N.L.R.B.*, 401 U.S. 142-43, fn. 12 (1971).

Of course, the cases are legion as to what is the applicable standard of review in cases of this type, yet there is no clear line of authority in this area. This is particularly true where the Board determination being subject to review relates to setting aside an election on the basis of objections or holding a hearing on such objections as opposed to a challenge to the legality of a particular type of collective bargaining unit. The Court below, as set out above clearly decided that an arbitrary and capricious standard of review should apply to objection matters, yet other circuits have, apparently, on occasion taken another view. *Celanese Corp. of America v. N.L.R.B.*, 291 2d 224, 225 (CA-7 1961); *N.L.R.B. v. Houston Chronicle Publishing Co.*, 300 F. 2nd 273 (CA-5 1962); *N.L.R.B. v. Bata Shoe Company*, 377 F. 2d 821, 829 (CA-4 1967).

From Petitioner's point of view the concept of arbitrary and capricious is so lacking in precision as to amount to a denial of due process, particularly when the statute involved speaks only in terms of substantial evidence. Taking the Court's decision on enforce-

ment in this matter at face value would mean for all practical purposes judicial review of the Board's decisions in this area would be nothing more than a mere formality. Not only have the Circuit Courts had trouble with this standard, but in a cose once before this Court on a petition for certiorari, the Board stated as follows:

> "*Celanese Corp. v. National Labor Relations Board*, 291 F. 2d 224 (CA-7), certiorari denied, 368 U.S. 925, and *National Labor Relations Board v. Bata Shoe Co.*, 377 F. 2d 821 (CA-4, certiorari denied, October 23, 1967 No. 456), upon which petitioner relies (Pet. 25), are distinguishable. Those were cases in which the courts set aside, as unsupported by substantial evidence, Board determinations that misrepresentations made by a union during an election campaign did not interfere with the employee's freedom of choice to a degree warranting setting aside of the election. The cases turned on their particular facts, and there may be a greater breadth for judicial review of such determinations than for the unit determination here involved." *Krieger-Ragsdale & Company, Inc. v. N.L.R.B.*, S. Ct. Dkt. 789, Brief of N.L.R.B. in Opposition, p. 8-9, fn. 10 (Dec. 8, 1967)

Thus, in cases of this type involving the standard applicable to judicial review of Board determinations in election cases as opposed to unit determinations there is a pressing need for a decision by this Court as to what standard should be applied for such purpose.

II

THE COURT BELOW ERRONEOUSLY AND UNCONSTITUTIONALLY REFUSED TO SET ASIDE A CERTIFICATION ELECTION OR TO REMAND THIS MATTER FOR A HEARING RELATING TO OBJECTIONS FILED BY PETITIONER TO A CERTIFICATION ELECTION IN LIGHT OF THIS COURT'S DECISION IN N.L.R.B. V. SAVAIR MANUFACTURING CO., 94 S. Ct. 495 (No. 72-1231 Decided December 17, 1973) THEREBY DEPRIVING PETITIONER'S EMPLOYEES OF THEIR RIGHTS UNDER SECTIONS 7 and 9 OF THE NATIONAL LABOR RELATIONS ACT, 29 U.S.C. 157, 159.

In a letter sent to all employees of Petitioner the UAW stated the following:

> "QUESTION: When will Shawnee Plastic workers begin paying UAW dues?
>
> ANSWER: Shawnee Plastic workers will not pay any union dues until after a contract has been negotiated for them and has been accepted by them! You will have increased wages and more benefits and it won't cost you a cent in AUW dues.
>
> QUESTION: Will Shawnee Plastic workers have to pay an initiation fee?
>
> ANSWER: NO. . . . Any worker in the plant at the time of the election will be exempt from an initiation fee!" (Appendix B, p. 124)

The Court below, in a footnote on the last page of its opinion stated the instant case was distinguishable from *Savair* on the facts, yet without pointing out

specifically what the distinguishing facts were in the two cases. (Appendix A, p. 5)

Of course, Petitioner would not be so presumptuous as to tell this Court what one of its recent cases means, but a close reading of *Savair* would seem to say the election in the instant case should be set aside for the reasons stated in that decision. The language in the letter set out above, of necessity would require employees to be at Shawnee and eligible voters before they would qualify for exemption from union initiation fees. The language "any worker in the plant at the time of the election" conditions application of the waiver to eligibility to vote in the election, i.e., the waiver would not run to anyone hired after the election. The clear implication here is waiver of fees in exchange for support for the union. From Petitioner's point of view, the fee waiver in this case had the same purpose as the waiver in *Savair* — an economic inducement to vote for the union of a substantial nature.

As observed by this Court in *Savair*, since Section 7 of the National Labor Relations Act treats the rights to engage in or refrain from engaging in union activities as equal rights, any such promise of benefit, whether from an employer or a union, is not protected within the ambit of Section 8(c) of such Act, and should be condemned. Any other rule would result in vitiating the intent of Congress in wording the applicable statute as it did by substituting form for substance. This would certainly be a strange result under a statute designed to further employees' rights. This is particularly true in this case where the record shows the statements about the waiver contained in the letter were false. (Appendix B ,p. 91; p. 95; p. 98)

Linn v. Plant Guards, 383 U.S. 53, 60 (1966). Similarly, the facts outlined in Petitioner's Statement further support this position. Certainly, the "factual matrix" in which this entire case took place makes it extremely improbably that the employees involved voted in an atmosphere free of fear and coercion.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals for the Sixth Circuit, or in the alternative, this cause be remanded with directions to the Court below to direct the Board to hold an evidentiary hearing on the issues raised herein.

Respectfully submitted,

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APPENDIX A

No. 73-1187

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

FILED
JOHN A. HIGGINS, C

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

SHAWNEE PLASTIC, INC.,

Respondent.

ORDER DENYING PETITION FOR REHEARING

Before PHILLIPS, Chief Judge, CECIL, Senior Circuit Judge, and ALLEN, District Judge.*

Upon consideration, it is ORDERED that the petition for rehearing be and hereby is denied.

Entered by order of the court.

CLERK

*Honorable Charles M. Allen, Judge, United States District Court for the Western District of Kentucky, sitting by designation.

No. 73-1187

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD, *Petitioner*, v. SHAWNEE PLASTICS, INC., *Respondent*.	ON APPLICATION for Enforcement of an Order of the National Labor Relations Board.

Decided and Filed January 22, 1974.

Before: PHILLIPS, Chief Judge, ALLEN*, District Judge, and CECIL, Senior Circuit Judge.

PER CURIAM. This case is before the Court on petition of the National Labor Relations Board for enforcement of its order against respondent, Shawnee Plastics, Inc., dated November 10, 1972, 200 N.L.R.B. No. 37. The Board submitted the case to a three member panel of the Board which found that the respondent was guilty of unfair labor practices in violation of Sections 8 (a)(5) and 8(a)(1) of the National Labor Relations Act by refusing to bargain with the Union certified for collective bargaining. The Board then ordered the respondent, upon request to bargain with the Union.

The respondent admitted that it refused to bargain with the Union but claimed that the election was illegal by reason of

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* The Honorable Charles M. Allen, United States District Judge for the Western District of Kentucky, sitting by designation.

the conduct of the Union members and that it should have been set aside by the Board.

The history of this case is as follows: On November 23, 1970, a petition under case no. 9-kc-8823 was filed with the Board by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (U.A.W.) for certification as bargaining representative of the qualified workers of the respondent; a stipulation for certification upon consent election was agreed upon by the parties; an election was held and a tally of the votes showed 122 for U.A.W. and 67 opposed to either U.A.W. or the intervenor International Association of Machinists and Aerospace Workers, AFL-CIO (I.A.M.); on January 18, 1971, respondent employer filed objections with the Board claiming that the conduct of the election and the Unions through their members was such as to prevent a fair election. The employer urged the Board to set aside the election and to order a new election which would be free of the alleged misconduct.

The Board referred the Objections to a Regional Director of the Board for investigation and report. The Director investigated each claimed objection and reported back to the Board with a recommendation that the Employer's Objections be overruled in their entirety and an appropriate Certification of Representative be issued. The Employer filed timely exceptions to the Report on October 13, 1971. Thereafter, on December 16, 1971, a three member panel of the Board upon consideration of the Objections, the Report and the Exceptions, thereto, overruled the Objections in their entirety and certified the U.A.W. as the exclusive representative of the employees in the appropriate unit for collective bargaining. The Employer's Exception to the Board's certification and request for reconsideration was denied by the Board on January 1, 1972.

Up to this point the Employer was afforded no opportunity for an evidentiary hearing on its Objections.

The Employer refused to comply with the Board's certification and order of December 16, 1971, for collective bargain-

ing and the proceeding now before us was begun by the filing of a charge against the employer under case No. 9-6a-6859, on March 3, 1972. Formal pleadings, a Complaint and Answer, were filed by the parties and then Counsel for the General Counsel moved for Summary Judgment.

To the motion for Summary Judgment all of the documents in the representative proceeding (No. 9-RC-8823), herein above enumerated, were attached including the Employer's Objections, the Director's Report and the Decision and Certification of the Board. The Employer filed a response to the motion for summary judgment and again challenged the validity of the certification in the companion representation case. It sought dismissal of the Complaint or in the alternative a full hearing before a trial examiner of the issues of fact raised in its response.

Without granting a hearing on the facts raised by the Objections and Response of the Employer the Board proceeded to consider and decide the motion for summary judgment on the record made in the representative case. It granted the motion, made Findings of Fact and Conclusions of Law and found that the Employer, respondent was guilty of unfair labor practices as heretofore indicated. The Board made the usual order to cease and desist from refusing to bargain with the Union, or from in any like or related manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, post appropriate notices and upon request to bargain with the Union. This is the Decision and Order of November 10, 1972, to which reference is made in the first paragraph hereof.

In controversies between an Employer and a Union the paramount purpose of the Act is to secure to the employees freedom of choice in their representatives. *N.L.R.B.* v. *Gilmore Industries, Inc.*, 341 F. 2d 240, 241.

The Board is vested with a great deal of discretion in determining whether an election should be set aside. *Rockwell Mfg. Co., Kearney Div.* v. *N.L.R.B.*, 330 F. 2d 795, 796-797

C.A. 7), *cert. den.*, 379 U.S. 890; *N.L.R.B.* v. *Tennessee Packers, Inc., Frosty Morn Div.*, 379 F. 2d 172, 180 (C.A. 6). The question now before us is whether the action of the Board in issuing a bargaining order without granting a hearing to the respondent on its objections, either in the representative case or in the unfair labor case now under consideration, was arbitrary and capricious. Under the Board's rules, if objections raise substantial and material issues of fact an evidentiary hearing should be granted. *Rockwell Mfg. Co., Kearney Div. N.L.R.B., supra.*

We have studied the charges of the respondent made in its statement of Objections and in its response to the motion for Summary Judgment. We find that the statements are ambiguous, based on hearsay and self serving declarations. They do not, in our judgment, allege facts which if proven would be cause for setting aside the election. Consequently we conclude that the Board did not abuse its discretion and that the order should be enforced.

Note: We have read the opinion of the Supreme Court in *N.L.R.B. v. Savair Manufacturing Company*. The facts of the *Savair* case are not analogous to the facts of the instant case. The *Savair* case is clearly distinguishable on its facts from the case at bar. Its pronouncement therefore is not applicable to the within *Shawnee Plastics* case.

APPENDIX B

No. 73-1187

United States Court of Appeals

FOR THE SIXTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner

v.

SHAWNEE PLASTICS, INC.,

Respondent

On Application for Enforcement of an Order of
The National Labor Relations Board

APPENDIX

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Acting Assistant General Counsel,
National Labor Relations Board,
Washington, D. C. 20570

THE CASILLAS PRESS, INC.—1717 K Street, N. W.—Washington, D. C.—223-1220

APPENDIX

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

In the Matter of SHAWNEE PLASTICS, INC. and INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW)	Case No. 9-CA-6859

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of: Shawnee Plastics, Inc.

Case No.: 9-CA-6859

11. 23. 70	Petition, filed.
01. 14. 71	Stipulation for Certification Upon Consent Election.
01. 14. 71	Notice of Election.
01. 14. 71	Certification on Conduct of Election.
01. 14. 71	Tally of Ballots, dated.
01. 18. 71	Employer's Objections, dated.

10. 06. 71 Regional Director's Report on Objections, Objections to Election and Recommendations to the Board, dated.

10. 13. 71 Respondent's Exceptions, dated.

12. 16. 71 Board's Decision and Certification of Representative, dated.

12. 27. 71 Respondent's Exception, dated.

01. 11. 72 Board's Order Denying Petition, dated.

03. 03. 72 Charge filed.

04. 05. 72 Complaint and Notice of Hearing, dated.

04. 14. 72 Respondent's Answer, dated.

08. 28. 72 General Counsel's Motion for Summary Judgment, filed.

09. 05. 72 Board's Order Transferring the Proceeding to the Board and a Notice to Show Cause, dated.

09. 20. 72 Respondent's Response, received.

11. 10. 72 Respondent's Response, received.

11. 10. 72 Board's Decision and Order, dated.

11. 20. 72 Respondent's Motion to Reconsider, received.

11. 24. 72 Board's Order Denying Motion, dated.

Form NLRB-501 (2-69)

Form approved Budget Bureau No. 64-R011

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

INSTRUCTIONS File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring

DO NOT WRITE IN THIS SPACE

Case No 9-CA-6859

Date Filed March 3, 1972

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

Name of Employer	Number of Workers Employed
S[illegible]	[illegible]

Address of Establishment (Street and number, city, zone, and State)	Type of Establishment (Factory, mine, wholesaler, etc.)
[illegible] 42[illegible]	Identify principal product or service

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and [illegible] (List subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, places involved, dates, places, etc.)

On December 16, 1971 the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) was certified as the bargaining agent for all production and [illegible] employees (case No. 9-RC-8823) of the above named Company. On January 6, 1972 and February 21, 1972 the above named employer has refused to bargain, collectively with our respondent, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) in violation of the act.

3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number)

International Union, United Automobile Aerospace and Agricultural Implement Worker of America (UAW)

4. Address (Street and number, city, zone, and State)	Telephone No.
Box # 603 Murray, Ky. 42071	[illegible]

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief

By Frank Runnels
(Signature of representative or person filing charge)

March 3, 1972 (Date)

International Representative (UAW)
(Title, if any)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

GPO 933-464

• • • • •

COMPLAINT
AND
NOTICE OF HEARING

It having been charged by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), herein called the Union, that Shawnee Plastics, Inc., herein called Respondent, has engaged in and is engaging in unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151, et seq., herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned Regional Director for Region 9, pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, Series 8, as amended, hereby issues this Complaint and Notice of Hearing and alleges as follows:

1. The Charge was filed by the Union on March 3, 1972, and served on Respondent, by registered mail, on March 7, 1972.

2. (a) Respondent is a Kentucky corporation with its principal offices and place of business at Kuttawa, Kentucky, where it is engaged in the manufacture and sale of plastic products.

(b) During the last 12 months, which is a representative period, Respondent had a direct outflow of goods valued in excess of $50,000, which is sold and shipped from its plant at Kuttawa, Kentucky directly to points located outside the State of Kentucky.

(c) At all times material herein, Respondent is, and has been, an "employer" as defined in Section 2(2) of the Act,

engaged in "commerce" and in operations "affecting commerce" as defined in Section 2(6) and (7) of the Act, respectively.

3. At all times material herein, the Union is, and has been, a labor organization as defined in Section 2(5) of the Act

4. At all times material herein, a unit of Respondent's employees, appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act, consisted of

> All production and maintenance employees, including inspectors, at the Respondent's Kuttawa, Kentucky operation, but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

5. On or about January 14, 1971, a majority of employees of Respondent in the unit described in paragraph 4, above, by secret ballot election conducted under the supervision of the Board in Case No. 9-RC-8823, designated and selected the Union as their exclusive representative for the purposes of collective bargaining with Respondent; and on December 16, 1971, the Board certified the Union as such exclusive collective-bargaining representative.

6. Commencing on or about January 3, 1972, and continuing to date, the Union has requested Respondent, in writing, to bargain collectively with respect to hours, wages, working conditions and other conditions of employment of the employees in the unit described in paragraph 4, above.

7. Commencing on or about January 6, 1972, and in particular, by written letters to the Union on or about January 6, 1972, and February 21, 1972, and at all times thereafter, Respondent has refused, and continues to refuse to bargain collectively

in good faith with the Union as the exclusive collective-bargaining representative of the employees of the unit described in paragraph 4, above, by refusing to recognize, or to meet or bargain with the Union.

8. By the acts and conduct alleged above, Respondent has engaged in, and is engaging in, unfair labor practices as defined in Section 8(a)(1) and (5) of the Act, "affecting commerce" as defined in Section 2(6) of the Act.

PLEASE TAKE NOTICE that on a date and at a time and place to be scheduled, a hearing will be conducted before a duly-designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, Series 8, as amended Respondent shall file with the undersigned Regional Director, acting in this matter as an agent of the Board, an original and four (4) copies of an Answer to said Complaint within ten (10) days from the service thereof, and that unless it does so, all of the allegations of the Complaint shall be deemed to be admitted to be true and shall be so found by the Board.

Form NLRB-4668, Statement of Standard Procedure in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Cases, is attached

Dated at Cincinnati, Ohio this 5th day of April, 1972

s/ John C Getreu
Regional Director, Region 9
National Labor Relations Board
2407 Federal Office Building
550 Main Street,
Cincinnati, Ohio 45202

Attachment

* * * * *

ANSWER

The Respondent, Shawnee Plastics, Inc., for its Answer to the Complaint filed herein, states as follows:

1. Respondent admits the allegations contained in paragraph 1 of the Complaint.

2. Respondent admits the allegations contained in paragraph 2(a), (b) and (c) of the Complaint.

3. Respondent admits the allegations contained in paragraph 3 of the Complaint.

4. Respondent admits the allegations contained in paragraph 4 of the Complaint.

5. Respondent denies the allegations contained in paragraph 5 of the Complaint as they relate to any legal intendment that a majority of its employees lawfully designated the Union as their collective bargaining agent, and therefore challenges the validity of the Board's certification of the Union as their exclusive collective bargaining representative in any appropriate collective bargaining unit. Otherwise the facts contained in said paragraph 5 are admitted.

6 Respondent admits the allegations contained in paragraph 6 of the Complaint.

7. Respondent admits the allegations contained in paragraph 7 of the Complaint.

8. Respondent denies the allegations contained in paragraph 8 of the Complaint.

WHEREFORE, Respondent prays that the Complaint herein be dismissed, and that findings be entered in favor of said Respondent, and for all other proper relief in the premises.

Respectfully submitted,

KAHN, DEES, DONOVAN & KAHN

By /s/ Joseph A. Yocum
Attorneys for Respondent

KAHN, DEES, DONOVAN & KAHN
305 Union Federal Building
Evansville, Indiana 47708
Of Counsel

CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for Shawnee Plastics, Inc., Respondent herein, hereby certifies that he has on this 13th day of April, 1972 served a copy of the above and foregoing Answer by mailing a copy of said Answer by United States Mail, first class postage prepaid, to the following:

International Union, United Automobile,
Aerospace and Agricultural Implement
Workers of America (UAW)
Att: Frank Kavanaugh, Int. Representative
Box #603
Murray, Kentucky 42071

Mr. Ralph Robinson, Coordinator
National Organizing Department
International Union, United Automobile,
Aerospace and Agricultural Implement
Workers of America (UAW)
Solidarity House
8000 E. Jefferson Avenue
Detroit, Michigan 48214

/s/ Joseph A. Yocum

* * * * *

MOTION FOR SUMMARY JUDGMENT

NOW COMES THE GENERAL COUNSEL, by the undersigned Counsel for the General Counsel, and moves that:

1. Respondent's Answer raises no litigable issues and a summary judgment is, therefore, appropriate; a true copy of Respondent's Answer is attached hereto as Exhibit A.

2. A true copy of the Stipulation for Certification Upon Consent Election agreement in Case No. 9-RC-8823, as approved by the Regional Director for Region 9, is attached as Exhibit B; a true copy of the Tally of Ballots, dated January 14, 1971, is attached as Exhibit C; a true copy of Respondent's Objections to Conduct of the Election and/or Conduct Affecting the Results of the Election, dated January 18, 1971, is attached as Exhibit D; a true copy of the Regional Director's Report on Objections, Objections to Election and Recommendations to the Board, with attachments, dated October 6, 1971, is attached as Exhibit E; a true copy of Respondent's Exceptions to the Regional Director's Report on Objections, Objections to the Election and Recommendations to the Board, dated October 13, 1971, is attached as Exhibit F; a true copy of the Decision and Certification of Representative, dated December 16, 1971, is attached as Exhibit G; a true copy of Respondent's Exceptions to the Decision and Certification of Representative, dated December 27, 1971, is attached as Exhibit H; and a true copy of Order Denying Petition for reconsideration and/or explication, dated January 11, 1972, is attached as Exhibit I.

3. All the allegations of the Complaint, attached hereto, as Exhibit J, be deemed to be true and be so found.

4. A Decision issue including Findings of Facts and Conclusions of Law in accordance with paragraph 3, above, and a recommended Remedial Order be issued for the reasons set forth in the supporting memorandum filed herewith.

Dated at Cincinnati, Ohio this 24th day of August, 1972.

/s/ Wayne E. Natale
Counsel for General Counsel
National Labor Relations Board,
Region 9
2407 Federal Office Building
550 Main Street
Cincinnati, Ohio 45202

Attachments: Exhibits A thru J

* * * * *

ORDER TRANSFERRING PROCEEDING TO THE BOARD
and
NOTICE TO SHOW CAUSE

On April 5, 1972, the Regional Director for Region 9 of the National Labor Relations Board issued a Complaint and Notice of Hearing in the above-entitled proceeding, alleging that the Respondent has engaged in and is engaging in certain unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) of the National Labor Relations Act, as amended. Subsequently, the Respondent filed an answer, admitting in part and denying in part the allegations of the complaint and requesting that the complaint be dismissed.

Thereafter, on August 28, 1972, the General Counsel, by counsel, filed with the Board a Motion for Summary Judgment and a Memorandum in Support of Motion for Summary Judgment, with exhibits attached. The General Counsel requests that the Board take judicial notice of the prior representation proceeding in Case 9-RC-8823. He contends that the Respondent, in its answer, raises no issues which were not or could not have been litigated in the representation proceeding, and that there are no unresolved issues requiring an evidentiary hearing in the instant case. He, therefore, moves that summary judgment be granted, and that a decision including findings of fact and conclusions of law in accordance with the allegations of the complaint and an appropriate remedial order be issued.

The Board having duly considered the matter,

IT IS HEREBY ORDERED that the above-entitled proceeding be, and it hereby is, transferred to and continued before the Board in Washington, D.C.

NOTICE IS HEREBY GIVEN that cause be shown, in writing, filed with the Board in Washington, D.C., on or before September 19, 1972, (with affidavit of service on the parties to this proceeding), why the General Counsel's motion for summary judgment should not be granted

Dated, Washington, D.C., September 5, 1972.

By direction of the Board:

s George A. Leet
Associate Executive Secretary

RESPONSE

Respondent now files its Response to Notice to Show Cause why General Counsel's motion for summary judgment should not be granted in the above case

1. The primary purpose in Respondent's opposition to General Counsel's motion for summary judgment is to challenge the validity of a certification issued in a companion representation case, 9-RC-8823. Respondent realizes that the Board has in effect a so-called relitigation ban in which it has traditionally taken the position that respondents in companion cases of this type are barred from relitigating any issues involved in a companion representation case. However, although Respondent feels that this doctrine is contrary to the spirit and intent of the Act, and especially Section 7, and constitutes a violation of its rights to due process of law in the sense that because it is denied discovery when it is also denied the subpoena power, it cannot enforce its rights, Respondent also files this Response and asserts that both the Board and the Regional Director involved in the companion representation case committed substantial errors of law, requiring that the election held herein be set aside. Of course Respondent also reserves its position as stated above with reference to the so-called relitigation ban.

2. Similarly Respondent takes the position that a major error of law was committed by both the Board and the Regional Director in overruling its objection with reference to the fee waivers involved in the instant case, particularly since in the instant case there is a clear misrepresentation of fact concerning

the Union's fee and dues structure. This issue seems to have been ignored thus far in this proceeding

3. Most striking, however, is that fact that Respondent's objections in the companion representation case did in fact raise substantial and material issues of fact which should have required a hearing. This is particularly true with reference to the conflict in the evidence in the Regional Director's report as to threats and intimidation of employees by Union representatives and the affidavits submitted by Respondent in support of its objection concerning the fact that substantial monetary payments were made to employees for the purpose of purchasing both their support and vote in the election.

4. In addition to the above-mentioned errors of law, both the Board and the Regional Director have ignored the interrelationship between and among the various objections to the election filed by Respondent in this case and employer in the companion representation case. Home Town Foods, Inc., vs. N. L. R. B., 379 F 2d 241 (CA-5, 1967) In sum, there was an atmosphere of intimidation and coercion that required that the election be set aside. The same is true with reference to the Union's claim that it could obtain automatic increases and benefits and fringes for Respondent's employees Also, as the record shows, a hearing should have been held due to the fact that employees of the Respondent were frightened and that information could not be obtained in any other way, and this once again amounts to a denial of due process of law

5. Most significant is the fact that the Regional Director ignores certain evidence submitted by the employer and that none of this evidence was appended to his report on this matter

indicating that it was ignored. This is particularly true with reference to the picture of an advertising clock at employer which was placed on the wall behind the area where the employees voted, showing the remains of UAW stickers that had been placed at times 12, 3, 6 and 9 around the circumference of the clock's face At this point Respondent would also reserve its position taken in its exceptions to the Regional Director's Report on Objections, Objections to Election and Recommendations filed with the Board on or about October 13, 1971, and would request the Board to review the entire record in this matter in light of all the above

6. Annexed hereto is the affidavit of Robert L Cardin, who was employed at Respondent during the time of the election in the companion representation case, whose affidavit Respondent feels was unavailable at prior times due to the fear of said affiant of retaliation, and therefore constitutes evidence that was unavailable during the time that Respondent was in the process of attempting to produce evidence on its objections. It would therefore be Respondent's position that the attached affidavit would be enough to allow it a hearing on its objections or in the alternative a hearing before a trial examiner in the instant case.

WHEREFORE, Respondent asks that the Complaint issued herein be dismissed or in the alternative that this matter be set for full hearing before a trial examiner for the purpose of trying the substantial and material issues of fact raised in this Response; that the motion for summary judgment herein be denied, and for all further and proper relief in the premises

Respectfully submitted,
KAHN, DEES, DONOVAN & KAHN

By s/ Joseph A Yocum

KAHN, DEES, DONOVAN & KAHN
305 Union Federal Building
Evansville, Indiana 47708
Of Counsel

9 14 72

I came to work for Shawnee Plastics, in Sept of 1970 and it was sometime after that that the union talk started up Generally it was in the cafeteria at the company during lunch time I was ask to sign a card and refused to sign It was during this time, before the election, that I began to receive telephone calls at my home after work Sometimes it would be 1 00 or 2 00 A. M. in the morning. They would not say who they were, but they would make threats that something bad would happen to me or my family if I continued to be against the union Before the election, as I came to work pressure would be put on us by the people from the union standing outside the drive One time as I drove up to work Big Puckett said to me, "You'd better remembe us, little fella, or we are going to remember you " I drove on off after this. I also know that before the election, other employ who were known to be against the union were given a hard time when they went in and out of the plant in that some of these guys would throw gravel on their cars and so on I did not appreciate all of this, but I seen it go on.

I have read the foregoing statement and it is true to the best of m knowledge and belief, September 14, 1972 I am giving this statement of my own free will and it is free and voluntary

s Robert L Cardin

Subscribed and sworn to before me by Robert L Cardin this 14th day of September, 1972

s Sue Whisman
Notary Public
State at Large
My Commission Expires July 29

[Issued 11/10/72] [D--6898
Kuttawa, Ky.]

* * * * *

DECISION AND ORDER

Upon a charge filed on March 3, 1972, by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), herein called the Union, and duly served on Shawnee Plastics, Inc., herein called the Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 9, issued a complaint on April 5, 1972, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing before an Administrative Law Judge[1] were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on December 16, 1971, following a Board election in Case 9--RC--8823, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;[2] and that, commencing

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1/ The title of "Trial Examiner" was changed to "Administrative Law Judge" effective August 19, 1972.

2/ Official notice is taken of the record in the representation proceeding, Case 9--RC--8823, as the term "record" is defined in Secs. 102.68 and 102.69(f) of the Board's Rules and Regulations, Series 8, as amended. See LTV

on or about January 6, 1972, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On April 14, 1972, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On August 28, 1972, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment, alleging that Respondent's answer raised no litigable issues. Subsequently, on September 5, 1972, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgement should not be granted. Respondent thereafter filed a response to Notice To Show Cause, with an affidavit attached thereto.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint and in its response to the Notice to Show Cause, Respondent admits all factual allegations

2/ (Continued) Electrosystems, Inc., 166 NLRB 938, enfd. 388 F. 2d 683 (C. A. 4, 1968); Golden Age Beverage Co., 167 NLRB 151; Intertype Co. v. Penello, 269 F. Supp 573 (D. C. Va., 1967); Follett Corp., 164 NLRB 378, enfd 397 F. 2d 91 (C. A. 7, 1968). Sec. 9(d) of the NLRA

of the Complaint, including the request, and its refusal, to bargain. Respondent contends, however, that the Union's certification is invalid because it was not afforded a hearing on its objections and because the Regional Director and the Board committed substantial errors of law which require that the election in the underlying representation proceeding be set aside. We do not agree.

The record in Case 9--RC--8823 indicates that in an election conducted on January 14, 1971, pursuant to a Stipulation for Certification Upon Consent Election in the stipulated unit, 122 votes were cast for the Union, 3 were cast for the Intervenor, and 67 were cast for neither organization, with 3 ballots challenged. Respondent filed timely objections to conduct affecting the results of the election and to the conduct of the election.

The objections alleged, in substance, that union agents threatened and interrogated employees on the plant premises while the polls were open; that the unions involved in the election, shortly before the date of the election, threatened employees with loss of jobs and plant closure if the employees did not vote for representation; and that union agents misrepresented employee rights under the Act and the amount of union dues. The objections further alleged that union agents told employees that Respondent had unlawfully acquired names of union card signers and would take disciplinary action against them and that automatic wage increases and improved working conditions would result from union representation.

After an investigation, the Regional Director issued his Report on Objections in which he found that Respondent's objections did not raise material and substantial issues affecting the results of the election and recommended that the objections be overruled in their entirety.

Thereafter, the Respondent filed timely exceptions to the Regional Director's report and a supporting brief requesting that the election be set aside or, in the alternative, that a hearing be held on the objections. In its Decision and Certification of Representative issued December 16, 1971, the Board found that Respondent's exceptions raised no substantial issues of fact or law warranting a hearing Accordingly, it adopted the Regional Director's recommendations, overruled Respondent's objections, and certified the Union as the exclusive bargaining representative of the employees in the stipulated appropriate unit Thereafter, on December 28, 1971, the Employer filed an exception to the Board's ruling on its objections and requested the Board to reconsider. On January 11, 1972, the Board issued an Order denying the petition for reconsideration. The contentions and arguments of Respondent in this unfair labor practice proceeding are the same as those it advanced in the underlying representation case which the Board has previously considered and denied.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding. [3]

All issues raised by the Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and the Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence nor does it allege

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3/ See Pittsburgh Plate Glass Co., v. N. L. R. B., 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs 102.67(f) and 102.69(c)

that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. We shall, accordingly, grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following.

Findings of Fact

I. The Business of the Respondent

Respondent is a Kentucky corporation with its principal offices and place of business in Kuttawa, Kentucky, where it is engaged in the manufacture and sale of plastic products. During the last 12 months, Respondent manufactured and sold plastic products valued in excess of $50,000 which were sold and shipped from its plant at Kuttawa, Kentucky, directly to points located outside the State of Kentucky.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. The Representation Proceeding

1. The unit

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All production and maintenance employees, including inspectors, at the Respondent's Kuttawa, Kentucky, operation, but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

2. The certification

On January 14, 1971, a majority of the employees of Respondent in said unit, in a secret ballot election conducted under the supervision of the Regional Director for Region 9, designated the Union as their representative for the purpose of collective bargaining with the Respondent. The Union was certified as the collective-bargaining representative of the employees in said unit on December 16, 1971, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. The Request To Bargain and Respondent's Refusal

Commencing on or about January 3, 1972, and at all times thereafter, the Union has requested the Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about January 6, 1972, and continuing at all

times thereafter to date, the Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that the Respondent has, since January 6, 1972, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and ostructing commerce and the free flow of commerce.

V The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent

for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See Mar-Jac Poultry Company, Inc., 136 NLRB 785; Commerce Company d/b/a Lamar Hotel, 140 NLRB 226, 229, enfd. 328 F. 2d 600 (C. A. 5), cert. denied 379 U. S. 817. Burnett Construction Company 149 NLRB 1419, 1421, enfd. 350 F. 2d 57 (C. A. 10.)

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

Conclusions of Law

1. Shawnee Plastics, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW), is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees, including inspectors, at the Respondent's Kuttawa, Kentucky, operation, but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since December 16, 1971, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about January 6, 1972, and at all times thereafter, to bargain collectively with the above-named

labor organization as the exclusive bargaining representative of all the employees, of the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing employees in the exercise of the rights guaranteed to them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Respondent, Shawnee Plastics, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), as the exclusive bargaining representative of its employees in the following appropriate unit.

> All production and maintenance employees, including inspectors, at the Respondent's Kuttawa, Kentucky, operation, but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Kuttawa, Kentucky, operation copies of the attached notice marked "Appendix."[4] Copies of said notice, on forms provided by the Regional Director for Region 9, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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[4] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

(c) Notify the Regional Director for Region 9, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D. C., November 10, 1972.

Edward B. Miller, Chairman

John H. Fanning, Member

Howard Jenkins, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

> All production and maintenance employees, including inspectors, at the Respondent's Kuttawa, Kentucky, operation, but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

SHAWNEE PLASTICS, INC.
(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Federal Office Building, Room 2407, 550 Main Street, Cincinnati, Ohio 45202, Telephone 513--684--3686.

. . . . .

MOTION TO RECONSIDER

Comes now Respondent in the above case by counsel and moves the Board to reconsider its Decision and Order issued herein on or about November 10, 1972, for the following reasons:

1. The Board may have inadvertently overlooked two issues raised by Respondent in its original Objections to the Election filed herein, its Exceptions to the Regional Director's Report (also recognized in said Report) and in its Response to General Counsel's motion for summary judgment and the Board's notice to show cause, as follows:

a. The conduct on the part of Petitioners relating to the offer of substantial monetary payments in return for votes and conduct favoring one of the petitioners, The United Auto Workers.

b The fact that the affidavit annexed to Respondent's Response filed herein shows that there was new evidence with reference to threats and coercion of its employees prior to the time of the election held herein.

WHEREFORE, Respondent asks that the election held herein be set aside upon its Motion to Reconsider or in the alternative, that the Board direct a hearing on said motion, and for all further and proper relief in the premises.

KAHN, DEES, DONOVAN & KAHN

By /s/ Joseph A. Yocum
Joseph A. Yocum
Attorneys for Respondent

Kahn, Dees, Donovan & Kahn
305 Union Federal Building
Evansville, Indiana 47708
Of Counsel

. . . . .

ORDER DENYING MOTION

On November 10, 1972, the National Labor Relations Board issued a Decision and Order in the above-entitled proceeding,[1] finding that the Respondent had engaged in and was engaging in certain unfair labor practices in violation of Section 8(a)(1) of the National Labor Relations Act, as amended, and ordering that Respondent cease and desist therefrom and take certain affirmative action to remedy such unfair labor practices.

Thereafter, on November 15, 1972, the Respondent filed a Motion to Reconsider, requesting that the election held herein be set aside upon its Motion, or, in the alternative, that the Board direct a hearing on said motion.

The Board having duly considered the matter.

IT IS HEREBY ORDERED that the Respondent's Motion to Reconsider be, and it hereby is, denied as it contains nothing not previously considered by the Board.

Dated, Washington, D. C., November 24, 1972.

By direction of the Board:

George A. Leet

Associate Executive Secretary

[1] 200 NLRB No. 37.

Form NLRB-502 (11-68)

N.L.R.B.
9TH REGION-CINCINNATI
'70 NOV 23 AM 11:00

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

PETITION

Form Approved
Budget Bureau No. 64-R002.10

DO NOT WRITE IN THIS SPACE

Case No. 9-RC-8823

Date Filed November 23, 1970

INSTRUCTIONS: Submit an original and four (4) copies of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located. If more space is required for any item, attach additional sheets, numbering item accordingly.

The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act:

1. Purpose of this Petition: (If box RC, RM, or RD is checked and a charge under Section 8(b)(7) of the Act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made.)

(Check one)

- [X] RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees.
- [ ] RM-REPRESENTATION (EMPLOYER PETITION) - One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner.
- [ ] RD-DECERTIFICATION - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.
- [ ] UD-WITHDRAWAL OF UNION SHOP AUTHORITY - Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.
- [ ] CLARIFICATION - A labor organization is currently recognized by employer but petitioner seeks clarification of placement of certain employees. (Check one)
  - [ ] in unit not previously certified.
  - [ ] in unit previously certified in Case No. _____
- [ ] AC-AMENDMENT OF CERTIFICATION - Petitioner seeks amendment of certification issued in Case No. _____

Attach statement describing the specific amendment sought.

2. NAME OF EMPLOYER: Shawnee Plastics Inc.
   EMPLOYER REPRESENTATIVE TO CONTACT: Gene Lester, Plant Mgr.
   PHONE NO.: 388-2253

3. ADDRESS(ES) OF ESTABLISHMENT(S) INVOLVED (Street and number, city, State, and ZIP Code): Lakeshore Dr. P.O. Box 278 Kuttawa, Kentucky 42055

4a. TYPE OF ESTABLISHMENT (Factory, mine, wholesaler, etc.): Factory

4b. IDENTITY OF PRINCIPAL PRODUCT OR SERVICE: Moliers of Thermoplastic Parts

5. Unit involved (If blocks checked, PRESENT bargaining unit and attach description of proposed clarification.)

Included: All Production and Maintenance Employees, and Inspectors.

Excluded: All Office Clerical Employees, Guards, Professional Employees, and Supervisors as Defined in the Act.

6a. NUMBER OF EMPLOYEES IN UNIT: PRESENT 225; PROPOSED (BY UC/AC)

6b. IS THIS PETITION SUPPORTED BY 30% OR MORE OF THE EMPLOYEES IN THE UNIT? [X] YES [ ] NO

*Not applicable to RM, UC, and AC

(If you have checked box RC or 7, please check and complete EITHER item 7a or 7b, whichever is applicable.)

7a. [ ] Request for recognition as Bargaining Representative was made on November 16, 1970 (Month, day, year) and Employer declined recognition on or about November 18, 1970 (Month, day, year) (If no reply received, so state.)

7b. [ ] Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8. Recognized or Certified Bargaining Agent (If none, so state.)
   NAME: None
   AFFILIATION:
   ADDRESS:
   DATE OF RECOGNITION OR CERTIFICATION:

9. DATE OF EXPIRATION OF CURRENT CONTRACT, IF ANY (Month, day, and year): None

10. IF YOU HAVE CHECKED BOX UD IN 1 ABOVE, SHOW HERE THE DATE OF EXECUTION OF AGREEMENT GRANTING UNION SHOP (Month, day, and year):

11a. IS THERE NOW A STRIKE OR PICKETING AT THE EMPLOYER'S ESTABLISHMENT(S)? YES [ ] NO [X]

11b. IF SO, APPROXIMATELY HOW MANY EMPLOYEES ARE PARTICIPATING?

11c. THE EMPLOYER HAS BEEN PICKETED BY OR ON BEHALF OF (Insert name) A LABOR ORGANIZATION OF (Insert address) SINCE (Month, day, year)

12. ORGANIZATIONS OR INDIVIDUALS OTHER THAN PETITIONER (AND OTHER THAN THOSE NAMED IN ITEMS 8 AND 11c) WHICH HAVE CLAIMED RECOGNITION AS REPRESENTATIVES AND OTHER ORGANIZATIONS AND INDIVIDUALS KNOWN TO HAVE A REPRESENTATIVE INTEREST IN ANY EMPLOYEES IN THE UNIT DESCRIBED IN ITEM 5 ABOVE. (IF NONE, SO STATE.)

NAME	AFFILIATION	ADDRESS	DATE OF CLAIM (Required only if Petition is filed by Employer)
None			

I declare that I have read the above petition and that the statements therein are true to the best of my knowledge and belief.

By Thomas Fuselo (Signature of representative or person filing petition)

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Name and address of union)

International Representative (Title of union)

Address 705 Kirtley Drive, Bowling Green, Kentucky 42101 (Street and number, city, State, and ZIP Code) 843-1378 (Telephone number)

EXHIBIT B

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

STIPULATION FOR CERTIFICATION
UPON CONSENT ELECTION

Pursuant to a Petition duly filed under Section 9 of the National Labor Relations Act, as amended, and subject to the approval of the Regional Director for the National Labor Relations Board (herein called the Regional Director), the undersigned parties hereby AGREE AS FOLLOWS:

1. SECRET BALLOT – An election by secret ballot shall be held under the supervision of the said Regional Director, among the employees of the undersigned Employer in the unit defined below, at the indicated time and place, to determine whether or not such employees desire to be represented for the purpose of collective bargaining by (one of) the undersigned labor organization(s). Said election shall be held in accordance with the National Labor Relations Act, the Board's Rules and Regulations, and the applicable procedures and policies of the Board.

2. ELIGIBLE VOTERS – The eligible voters shall be those employees included within the Unit described below, who were employed during the payroll period indicated below, including employees who did not work during said payroll period because they were ill or on vacation or temporarily laid off, and employees in the military services of the United States who appear in person at the polls, also eligible are employees engaged in an economic strike which commenced less than twelve (12)

months before the election date and who retained their status as such during the eligibility period and their replacements, but excluding any employees who have since quit or been discharged for cause and employees engaged in a strike who have been discharged for cause since the commencement thereof, and who have not been rehired or reinstated prior to the date of the election, and employees engaged in an economic strike which commenced more than twelve (12) months prior to the date of the election and who have been permanently replaced. At a date fixed by the Regional Director, the parties, as requested, will furnish to the Regional Director, an accurate list of all the eligible voters, together with a list of the employees, if any, specifically excluded from eligibility.)

3. NOTICES OF ELECTION – The Regional Director shall prepare a Notice of Election and supply copies to the parties describing the manner and conduct of the election to be held and incorporating therein a sample ballot. The parties, upon the request of and at a time designated by the Regional Director, will post such Notice of Election at conspicuous and usual posting places easily accessible to the eligible voters.

4. OBSERVERS – Each party hereto will be allowed to station an equal number of authorized observers, selected from among the nonsupervisory employees of the Employer, at the polling places during the election to assist in its conduct, to challenge the eligibility of voters, and to verify the tally.

5. TALLY OF BALLOTS – As soon after the election as feasible, the votes shall be counted and tabulated by the Regional Director, or his agent or agents. Upon the conclusion of the counting, the Regional Director shall furnish a Tally of Ballots to each of the parties.

6. **POST-ELECTION AND RUN-OFF PROCEDURE** – All procedure subsequent to the conclusion of counting ballots shall be in conformity with the Board's Rules and Regulations.

7. **RECORD** – The record in this case shall be governed by the appropriate provisions of the Board's Rules and Regulations and shall include this stipulation. Hearing and notice thereof, Direction of Election, and the making of Findings of Fact and Conclusions of Law by the Board prior to the election are hereby expressly waived.

8. **COMMERCE** – The Employer is engaged in commerce within the meaning of Section 2(6) of the National Labor Relations Act, and a question affecting commerce has arisen concerning the representation of employees within the meaning of Section 9(c). (Insert commerce facts.) The Employer, Shawnee Plastics, Inc., a Kentucky corporation with principal offices and place of business located at Kuttawa, Kentucky, is engaged in the manufacture and production of plastic products. During the next 12 months, a representative period, the Employer projects the manufacture and sale of plastic products valued in excess of $50,000 which will be shipped directly to points located outside the State of Kentucky.

9. **WORDING ON THE BALLOT** – Where only one labor organization is signatory to this agreement, the name of the organization shall appear on the ballot and the choice shall be "Yes" or "No." In the event more than one labor organization is signatory to this agreement, the choices on the ballot will appear in the wording indicated below and in the order enumerated below, reading from left to right on the ballot, or if the occasion demands, from top to bottom. (If more than one union is to appear

on the ballot, any union may have its name removed from the ballot by the approval of the Regional Director of a timely request, in writing, to that effect.)

First. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW)

Second. NEITHER

Third. INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO

10. PAYROLL PERIOD FOR ELIGIBILITY — November 29, 1970.

11. DATE, HOURS, AND PLACE OF ELECTION — January 14, 1971 (CST)

Hours: 7:00 a. m. to 9:00 a. m. (CST)
3:00 p. m. to 5:00 p. m. (CST)

Place. Lunch Room at the Employer's Plant at Kuttawa, Kentucky

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO
(Name of Organization)

12. THE APPROPRIATE COLLECTIVE BARGAINING UNIT

6500 Pearl Road, Suite 200
Cleveland, Ohio 44130
(Address)

All production and maintenance employees employed by the Employer at its Kuttawa, Kentucky operation, including inspectors, but excluding all office clerical employees, professional employees, guards and supervisors, as defined in the Act.

By /s/ Donald E. Wharton 12-8
(Name and Title) (Date)
Donald E. Wharton, Gr. Lodge Re

If Notice of Representation Hearing has been issued in this case, the approval of this stipulation by the Regional Director shall constitute withdrawal of the Notice of Representation Hearing heretofore issued.

DUPLICATE ORIGINAL

SHAWNEE PLASTICS, INC.
(Employer)

Lakeshore Drive
Kuttawa, Kentucky 42055
(Address)

By /s/ Joseph A. Yocum — 12-5-70
(Name and Title) (Date)

Joseph A. Yocum, Attorney

Recommended:

/s/ William A. Molony — 12-9-70
(Board Agent) (Date)

Date approved December 9, 1970

/s/ John C. Getreu
Regional Director,
National Labor Relations Board

Case No. 9-RC-8823

- -

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW)
(Name of Organization)

705 Kirtley Drive
Bowling Green, Kentucky 42101
(Address)

By /s/ Thomas Puckett, Int'l Rep. 12-5-70
(Name and Title) (Date)

Thomas Puckett, Int'l. Rep.

INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS, BLACKSMITHS, FORGERS AND HELPERS, AFL-CIO
(Name of Organization)

570 New Brotherhood Building
Kansas City, Kansas 66101
(Address)

By _____
(Name and Title) (Date)

EXHIBIT C

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

[redacted] PLASTICS, INC.
Employer

and

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW)
Petitioner

Case No. 9-RC-8823

Date issued [redacted] 14, 1971

Type of Election (If applicable check either or both)
- [x] Stipulation
- [ ] Board Direction
- [ ] Consent Agreement
- [ ] RD Direction

- [ ] 8(b) (7)
- [ ] Mail Ballot

TALLY OF BALLOTS

The undersigned agent of the Regional Director certifies that the results of the tabulation of ballots cast in the election held in the above case, and concluded on the date indicated above, were as follows:

1. Approximate number of eligible voters [redacted]
2. Void ballots [redacted]
3. Votes cast for INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE, AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) 12
4. [redacted] [redacted]
5. Votes cast for INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO 4
6. Votes cast against participating labor organization(s) 1
7. Valid votes counted (sum of 3, 4, 5, and 6) 17
8. Challenged ballots 0
9. Valid votes counted plus challenged ballots (sum of 7 and 8) 17
10. Challenges are (not) sufficient in number to affect the results of the election.
11. A majority of the valid votes counted plus challenged ballots (item 9) has (not) been cast for:

For the Regional Director

[redacted]

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For [redacted] PLASTICS, INC.
Lorraine Tibbles

For INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW)
Lena M. Russo

For INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO
Nilda L. Garcia

For

Exhibit C

EXHIBIT D

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 9

SHAWNEE PLASTICS, INC., Employer	)
and	) Case No. 9-RC-8823
INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), Petitioner	)
INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO (IAM) Intervenor	)

OBJECTIONS

Comes now the Employer in the above entitled case and i reference to an election held on the Employer's premises on th 14th day of January, 1971 at various periods of times, submits the following objections to the conduct of the election and/or conduct affecting results of the election on the part of the Petitioner and Intervenor (hereinafter called Unions), at and before the time of the election herein, for the following reason

1. With reference to the conduct of the election itself, on the day of said election a group of employees of the Employe were directly interrogated and coerced by agents and/or repre sentatives of the Unions under such circumstances as to amou to interrogation and threats, open and notorious on the plant premises of Employer and during times when the polls were

open, so as to create an atmosphere in which the true desires of Employer's employees could not be lawfully expressed within the meaning of Section 7 of the National Labor Relations Act as amended. Among other things, this conduct included threats to employees of Employer shortly before they went to vote in the election in question in this case, and now being challenged by this Employer.

2. The Unions involved in this proceeding engaged in a course of conduct designed to unlawfully affect the results of this election in that in the relevant period of time shortly prior to the date of the election involved herein, both Unions engaged in unlawful campaign tactics.

a. Included among this and other conduct were acts of misrepresentation of material facts of enough weight to materially affect the results of said election at such times as to make effective reply impossible or concerning subject matter to which an effective reply was impossible, all of which took place under such circumstances as to indicate the Unions were in an authoritative position to know the facts involved, which conduct was as follows:

(1) Employer's employees were told that if they failed to vote the Union in numerous employees of Employer would lose their jobs, and that employees must vote the Union in in order to protect the jobs of their fellow employees.

(2) Employer's employees were told that if they failed to vote the Union in the company would close down its plant premises and move to another location.

(3) Employer's employees were told that the National Labor Relations Act protected only the right to engage in union activity and were not told that the National Labor Relations

Act protected the rights of employees to not engage in union activities.

(4) Employer's employees were told that the amount of dues that were required to be paid amounted to much less than in fact the dues requirements of the UAW in fact were at the time such statements were made by the UAW to employees of Employer. Also, the Unions ( ) false statements with reference to waiver of dues and Union initiation fees.

(5) Employer's employees were told that the Employer knew which employees of the company had signed Union cards, and indicated that not only would disciplinary action be taken against such employees, but that the company had used unlawful means to obtain such information.

(6) The Unions claimed that were the employees of Employer to vote them in they would obtain automatic increases in wages and working conditions, contrary to the requirements of the Act, thereby falsely stating to Employer's employees the rights that are obtained as a result of an election victory.

3. The conduct described above indicates a course of unlawful conduct of necessity involving interrogation, threats and restraint and coercion within the meaning of the Act, and in addition therefore, the above-mentioned misrepresentations amount to unlawful conduct requiring that the election be set aside for either or both reasons stated herein. The conduct described above and in this paragraph by reference was engaged in through handbills, circulars, meetings and home visits to employees of Employer, and was of such a coercive nature that Employer would ask that the Board supply it with agents to interview such employees upon Employer's supplying names

and addresses, since Employer is advised that its employees are frightened with reference to the matter referred to in these objections.

WHEREFORE, by the acts set forth above and by other acts and conduct the Unions through their officials, agents and representatives have instilled in the minds of the employees of the Employer a fear of reprisal and threats, intimidation, and coercion sufficient to prevent a free choice of a bargaining representative, and have through a series of material and significant misrepresentation misled Employer's employees to such an extent that their choice of a bargaining representative in the instant election is meaningless; therefore, Employer petitions and respectfully urges the Board to set aside the election conducted in this case on January 14, 1971, and to direct and conduct a new election which will be free from the acts committed by the Unions as set forth above, in order that a true, uncoerced, and fully and fairly informed majority of Employer's employees may determine the question of representation which still exists in this case, and for all further and proper relief in the premises.

SHAWNEE PLASTICS, INC.

By /s/ LeRoy Kizer
President, Employer

KAHN, DEES, DONOVAN & KAHN
305 Union Federal Building
Evansville, Indiana 47708
Attorneys for Employer

CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for the Employer in the foregoing case, hereby certifies that on this 18th day of January, 1971, he served a copy of the above and foregoing Objections to the election, by mailing a copy of same by United States Mail, first class postage prepaid, to the following:

Mr. Thomas Puckett
International Representative
International Union, United Automobile,
Aerospace and Agricultural Implement
Workers of America (UAW)
705 Kirtley Drive
Bowling Green, Kentucky 42101

Mr. Donald E. Wharton
Grand Lodge Representative
International Association of Machinists
and Aerospace Workers, AFL-CIO (IAM)
6500 Pearl Road, Suite 200
Cleveland, Ohio 44130

/s/ Joseph A. Yocum

REPORT ON OBJECTIONS, OBJECTIONS TO ELECTION AND RECOMMENDATIONS TO THE BOARD

Pursuant to the terms and conditions of a Stipulation for Certification upon Consent Election, herein called the Stipulation, approved by the undersigned on December 9, 1970, an election by secret ballot was conducted on January 14, 1971, among certain employees[1/] of the above-named Employer to determine whether such employees desired to be represented for the purposes of collective-bargaining by the above-named Petitioner or by the above-named Intervenor or by neither.

Upon the conclusion of the election, a Tally of Ballots[2/] was furnished to the parties pursuant to the Rules and Regulations of the National Labor Relations Board herein called the Rules and the Board, respectively, which disclosed the following results:

Approximate number of eligible voters	203
Void ballots	1

1/ The appropriate bargaining unit described in the Stipulation is as follows: "All production and maintenance employees employed by the Employer at its Kuttawa, Kentucky operation, including inspectors, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act."

2/ Service of the Tally of Ballots was acknowledged by authorized observers of the parties, who also certified that the balloting was fairly conducted, that all eligible voters were given an opportunity to mark their ballots in secret, and that the ballot box was protected in the interest of a fair and secret vote.

Votes cast for the Petitioner	122
Votes cast for the Intervenor	3
Votes cast against participating labor organizations	67
Valid notes counted	192
Challenged ballots	3
Valid votes counted plus challenged ballots	195

The challenged ballots are not sufficient in number to affect the results of the election.

On January 19, 1971, the Employer filed timely Objections to Conduct Affecting the Results of the Election, herein called the Objections, which were duly served upon the Petitioner and the Intervenor, in conformity with the Board's Rules.

Pursuant to the provisions of Section 102.69 of the Rules, an investigation of the issues raised by the Objections was conducted under the supervision and direction of the undersigned,[3/] who, after carefully considering the matter, makes the following findings and recommendations:

THE OBJECTIONS

The Employer's Objections allege, in substance, that:

1. On the day of the election, a group of employees was directly interrogated and threatened by agents and/or representatives of the Petitioner and the Intervenor, during the time when the polls were open and on the Employer's premises, which created an atmosphere in which the true desires of the Employer's employees could not be lawfully expressed.

3/ As part of the investigation, the parties were requested to furnish statements of position as to the Objections and evidence in support thereof. In response to this request, the Petitioner, Intervenor and the Employer complied.

2. The Petitioner and Intervenor, shortly before the election, engaged in unlawful campaign tactics through misrepresentations of material facts, at times when there was no adequate opportunity to reply, or concerning matters to which effective reply was impossible. More particularly this conduct consisted of:

a. Telling employees that if they failed to vote the "Union" in, numerous employees would lose their jobs and that employees must vote the "Union" in to protect the jobs of their fellow employees.

b. Telling employees that if they failed to vote the "Union in, the Employer would close its plant and move to another location.

c. Telling employees that the National Labor Relations Act protected only the right to engage in union activity without informing them that they also had a right to refrain from engaging in union activity.

d. Telling employees that the amount of dues that were required to be paid was much less than, in fact, the requirements of the Petitioner and also making false statements with reference to waiver of dues and union initiation fees.

e. Telling employees that the Employer knew which employees had signed union cards, indicating that it would take disciplinary action against them and that it had used unlawful means to obtain such information.

f. Making claims that automatic increases in wages and working conditions would result if they were selected and thereby falsely stated to them the rights that are obtained as a result of an election victory.

3. The conduct involved in the preceding Objections indicates a course of unlawful conduct involving interrogation, threats, restraint and coercion within the meaning of the Act, and that the misrepresentations made are sufficient to require setting aside the election.

4. A general objection which includes the specific acts enumerated in the preceding Objections and other acts and conduct which prevented the employees from making an uncoerced decision.

OBJECTION NO. 1:

The Employer contends that on the day of the election a group of employees was directly interrogated and threatened by agents and representatives of the Petitioner and/or the Intervenor at the time the polls were open.

The Employer submitted statements from five employee witnesses.

Witness No. 1, a supervisor, relates that on the morning of the election it was apparently reported to him that several persons, many of whom were not employees of the Employer, were stationed in such a position near the gate entering the Employer's premises as to make it impossible for employees to enter the plant without stopping, with the result that several employees were forced to either accept union insignia or other items or not report for work. This witness also relates that he heard, from an unknown source, that an employee of the Employer approached the Board Agent conducting the election in the polling area and informed him of an incident which he wanted investigated. This latter incident involved the conduct of David Loveless, department manager in the molding department of the Employer, in which he told a third employee he should vote

"neither" when he did vote and that the complaining employee was attempting to make an issue of this fact.

Witness No. 1 also relates that it was reported to him by an unknown source that the Employer's observer at the election was engaging in conversations with supervisors of the Employer during the polling period and that the Petitioner's observer said to the Employer's observer, "If you talk to any more supervisors, I'll report you to the NLRB agent."

Witness No. 2, also a supervisor of the Employer, states that it was his "impression" that employees were frightened during the organizing campaign because he received telephone calls from some employees who "were so frightened they refused to give their names." He did not identify any employees, nor did he mention the name or position of the person or persons who allegedly made the calls.

Witness No. 3 states that sometime in the course of the organizing campaign he was approached by an unnamed employee during the lunch period who asked him to sign an authorization card, and that he refused to sign it. He states that thereafter he began receiving telephone calls at home from unidentified persons who made "threats" against him and/or members of his family. No specific comments were made by Witness No. 3 about either the contents of the remarks or the identity of the person(s) who called. He also relates that at an unspecified time "Big Puckett" from the "Union" told him, "You better remember us, little fella (sic) or we're going to remember you." He also relates that an unidentified employee stated to him at the election that if he "didn't sign one of their cards, I would have a rough (sic) time."

Witness No. 4, who "would prefer not to name any names", reports that she was approached in December 1970 by an unknown person and asked to wear a union button, which she refused to do. She relates that she was then asked to sign an authorization card by an unidentified fellow employee, and when she refused was told, "If I didn't sign a card and the Union came in, and it was going to come in, things would go hard or they would make it hard on me." No time was specified and no names of the persons who approached her were given.

Witness No. 5 states that a fellow employee told her about being threatened at work if she did not sign an authorization card. No identity of the person who allegedly made the threat was made and no approximate time was given.

Witness No. 6 relates that "around election time someone was threatened, but I don't know who told me or who was threatened."

Witness No. 7 states that "I am not going to name any names," but relates that she had heard from another employee that "If anyone tells what went on during the campaign, the 'Union' will get them."

The Petitioner denies that any of its agents or representatives interrogated or threatened employees at any time. The Petitioner submitted four witnesses in support of its position, two of whom are alleged agents of the Petitioner.

Witness No. 1, an alleged agent of the Petitioner, states that at no time during the organizing campaign did he or any representative of the Petitioner make any statement to any employee threatening them or interrogating them about any matter.

Witness No. 2, an alleged representative of the Petitioner, any manner.

Witness No. 3, an employee of the Employer, states that she was very active during the organizing campaign but never heard or witnessed any representative of the Petitioner interrogating employees or threatening them in any way, because of their support or nonsupport of the Petitioner.

Witness No. 4, an employee of the Employer, relates that he was very active during the organizing campaign and that he did not witness or observe any representative of the Petitioner interrogating or threatening employees in any way.

The evidence presented by the Employer's Witnesses 1 through 7 shows that all statements attributed to the Petitioner and/or Intervenor were uttered by employees and not by representatives of the Petitioner or the Intervenor. The evidence also shows that all, save the comment attributed to "Big Puckett", were based on hearsay, impressions gained by supervisors of the Employer, or completely unreliable evidence based on hearsay. Moreover, any of the remarks reported, which might be attributed to a given time and a named employee, cannot, in any event, be the basis for setting aside the election because it is clear that no agency relationship exists between the Petitioner and those alleged to have made the statements. In the absence of such an agency relationship, no finding of objectionable conduct sufficient to set aside an election can be found. 4/

The remaining issue raised by this Objection is the statement attributed to "Big Puckett" as charged by Witness No. 3. He does not indicate when the comment was alleged to have been made nor the identity of the person described as "Big Puckett". It appears that no other employees were present at the time and that the

4/

comment was not made to any other employees. Assuming, without finding, that the statement, "You'd better remember us, little fella (sic) or we're going to remember you" was made and that the person referred to as "Big Puckett" as in fact, an agent of the Petitioner at the time, the remark does not constitute interference, in view of its ambiguous character and the isolated circumstances under which it was uttered. 5/

Under all the circumstances, the undersigned is of the opinion that the conduct attributed to the Petitioner and/or the Intervenor in Objection No. 1 does not constitute the kind of conduct which warrants setting aside the election. Accordingly, it is recommended that this Objection be overruled.

OBJECTION NO. 2(a), (b), (c), (d), (e) and (f):

Inasmuch as the sub-paragraphs are, in essence, particularizations of the same Objection, they will be considered together.

The Employer contends that the Petitioner and/or Intervenor made representations of material facts during the campaign when effective reply was made impossible as exhibited in 2(a) by telling employees that if they failed to vote the "Union" in, numerous employees would lose their jobs and that employees must vote the "Union" in to protect the jobs of their fellow employees.

The Employer submitted two statements in support of its contentions. Witness No. 1, a supervisor, states that he received

5/ Lincoln Plastics Corporation, 122 NLRB 291, 293, where the Board found that a note sent to two employees which stated, "In substance, he should join the Union or 'he would be sorry', was not sufficient to have interfered with the election."

telephone calls from unnamed employees of the Employer "several days before the election," who allegedly said they were frightened, and further, told him that representatives of the Petitioner would know "how individual employees would vote in the election and if a specific employee did not wear a union button and vote for the UAW in the election, once the Union got in, such employees would be fired and would lose their jobs." He also relates that another employee told him that she was afraid to vote because if "she did not vote for the UAW, she would be fired." No identity of the employee was made and no identity of the source for the statements related by Witness No. 1 were given.

Witness No. 2 states that a fellow employee who is unidentified, approached her to sign an authorization card, and when she refused the employee told her, "If I didn't sign a card and the Union came in and it was going to come in, things would go hard or they would make it hard on me."

The Petitioner and the Intervenor deny that any such conduct occurred.

The Petitioner presented two witnesses in support of its position, one of whom was an agent.

Witness No. 1 states that he was very active in the organizing campaign and at no time witnessed or observed any threats made to any employees about their failure to sign authorization cards.

Witness No. 2, an agent of Petitioner, states that neither he nor any agent or representative of the Petitioner made any statement to any employees as to the consequences which might result if they did not sign authorization cards. In fact, Witness No. 2 states that he never obtained any signed authorization

cards from any employees, and that he told employees on several occasions that he could promise them nothing except that "if the UAW represented them they would be backed by the largest industrial union in the world."

The Intervenor denies engaging in any of the conduct which occurred.

Assuming, arguendo, that the statement in question was made by an individual for whom the Petitioner and/or Intervenor was responsible, because of any agency relationship, to the effect that if employees did not vote for the Petitioner they would lose their jobs. It is, nonetheless, non-coercive in nature and not a threat. The Board has recently held in a substantially similar situation as alleged to have occurred here, that the statement was not coercive and not a threat because" . . . in the first place, the vote was to be by secret ballot under conditions safeguarded by the Board; and no evidence was offered to show that any employee had reason to believe that the Petitioner could ascertain how he voted. In the second place, no evidence is offered to show that any employee had reason to believe that the Employer favored the Petitioner and on request was disposed to discharge any employees for voting 'against' Petitioner." Janler Plastic Mold Corporation, 186 NLRB No. 80.

Under all the circumstances, the undersigned concludes that this allegation does not raise any substantial or material issues affecting the results of the election, and recommends that it be overruled.

With respect to 2(b), the Employer contends that the Petitioner and/or Intervenor told employees that if they failed to vote the "Union" in, the Employer would close its plant and move to another location.

The Employer submitted no statements from employees or others to support this allegation

The Petitioner and Intervenor deny engaging in the conduct alleged.

It is well established that the party filing the objections has the duty to supply "specific evidence of conduct which prima facie would warrant setting aside the election." O. K. Van and Storage, Inc., 127 NLRB 1537, 1539, enf'd 297 F. 2d 74 (C. A. 5). See also Bufkor-Pelzner Division, Inc., 169 NLRB 998, 999, enf'd. 432 F. 2d, 428 (C. A. 9), Order Denying Rehearing at ___F. 2d ___, 77 LRRM 2327 (C. A. 9) It is also clear that "the speculative possibility advanced by a party that evidence to support its allegations might be developed at a hearing is insufficient to warrant delay." O. K. Van and Storage, Inc., supra.

Under the above circumstances, and in view of the fact that the investigation has not otherwise revealed any evidence in support of allegation 2(b), I find it to be without merit and recommend that it be overruled.

As to Objection 2(c), the Employer contends that employees were told that the National Labor Relations Act protected only the right to engage in union activity, without informing them that they also had a right to refrain from engaging in union activities.

The Employer presented no witnesses but did submit three handbills in support of its contention. [6] Exhibit A states, in pertinent part:

The law says under Section 7 of the National Labor Relations Act, as amended, in part: Employees shall have

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6/ The three handbills mentioned are attached hereto as Exhibits A, B, and C

> the right to self-organization, to form, join, or assist labor organizations to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. (Emphasis added.)
>
> Exhibit B provides, in relevant part:
>
> The United States government guarantees your right to form, join and participate in a labor organization.
>
> Exhibit C provides, in pertinent part:
>
> The law says that you have a right to UNION REPRESENTATION!
>
> The law says that you have the right to a UNION CONTRACT!

There is no denial by the Petitioner or the Intervenor that Exhibits A, B and C were distributed on the dates which they bear, November 11, 1970, October 29, 1970, and November 3, 1970, respectively.

It is well established that conduct committed by a party to an election is sufficient to set aside the election "only where there has been a misrepresentation . . . , which involves a substantial departure from the truth at a time which prevents the other party or parties from making an effective reply, so that the misrepresentation, whether deliberate or not, may reasonably be expected to have a significant impact on the election." Hollywood Ceramics Company, Inc., 140 NLRB 221, 224. In the instant case the representations made and enumerated above are not substantial misrepresentations, but are merely statements informing the employees of rights that they have with regard to union representation.

Exhibit A, before it quotes from the National Labor Relations Act, includes the prefatory remark that the Act "in part provided as quoted. Exhibits B and C do not claim to quote from the National Labor Relations Act but merely set out rights, in fact, which employees by reasonable interpretation may have under the Act. The fact that employees have the "right" implies the converse, which is that they also have the "right" not to engage in the activities specified. In Hollywood Ceramics, supra, it was stated, "The Board may find that employees possess independent knowledge with which to evaluate the statements" involved in objections.

In light of the foregoing, the undersigned concludes that the conduct attributed to the Petitioner and/or the Intervenor in 2(c) does not constitute the kind of conduct which warrants setting aside the election. Accordingly, it is recommended that this allegation be overruled [7]

With respect to 2(d), the Employer contends that the Petitioner told employees that the amount of dues that were required to be paid was much less than, in fact, the requirement of the Petitioner.

The Employer submitted statements from five employee witnesses in support of its contentions.

Witness No. 1 states that he was told by a fellow employee after the election that, "If he did not sign one of the cards he would have to pay cash money to belong to the Union."

Witness No. 2 relates that after the election an unidentified employee told her that if she did not sign a card she would have to pay a $50.00 initiation fee "or as high as $50."

Witness No. 3 states that an alleged agent, unidentified, of the Petitioner told her that there would not be any initiation fee for those who signed cards before the election.

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[7] Hollywood Ceramics Company, Inc., supra.

Witness No. 4 relates that "around election time" an unidentified employee approached her to sign a card and told her that she would pay an initiation fee if she did not.

Witness No. 5 relates that, in his capacity as a supervisor of the Employer, an employee told him that a third employee, who remains unidentified, approached the second party, after the election, and told her that if she did not sign a card she would be charged $30 to join the "Union" after it had obtained a contract

The Employer also submitted handbills distributed by the Petitioner relating to the dues structure and initiation fees.[8/] Exhibit D is a handbill distributed on January 7, 1971, addressed to the employees of the Employer. It is entitled "Facts about the UAW Dues Structure." It then poses a series of questions and answers about dues an initiation fees, which includes the following:

Q. How much are the monthly dues in the UAW?

A. A minimum of $5 per month, or two hours pay, excluding shift premium and overtime pay.

Q. How is this money distributed?

A. Forty percent stays in the Local Union treasury. 30 percent goes into the UAW strike insurance fund, 30 percent goes into the UAW general fund to provide the many vital services for the Local Union, such as research, latest information on collective bargaining, legal assistance, etc.

Q. When will the Shawnee Plastic Workers begin paying UAW dues?

8/ Attached hereto as Exhibits D, a further reference to Exhibit C and E.

A. Shawnee Plastic Workers will not pay any union dues until after a contract has been negotiated for them and has been accepted by them! You will have increased wages and more benefits and it won't have to cost you a cent in UAW dues.

Q. Will Shawnee Plastic Workers have to pay an initiation fee?

A. No . . . any worker in the plant at the time of the election will be exempt from an initiation fee!

The remaining questions and answers deal with the deduction of union dues and the election of officers.

Exhibit C is entitled, "That Message from the Boss . . ." It then poses rhetorical questions and answers, including, in pertinent part, the following with regard to this Objection:

> All the Union wants is your dues money . . . Yes, the UAW charges nominal dues. Two hours pay per month. But why is the boss worried about <u>your</u> dues? He knows that higher UAW wages will <u>repay</u> your dues many times over. <u>That's why!</u> It stands to reason that no organization can represent you without finances. You pay to support your schools and your church. Why not your union?

Exhibit E is an excerpt from "December 1970 - UAW Solidarity - page 7." The excerpt is entitled "New Dues Facts in a Nutshell" and includes, <u>inter alia</u>, the following:

> UAW members in the auto, agricultural implement and other sections of the Union who have POLA retroactivity coming will pay $20 a month in addition to the regular two-hours' dues.
>
> A month after the GM strike ends these members' dues will decrease to the equivalent of four hours' pay per month.

Other members' dues rise from the regular two hours' pay equivalent to four hours.

The Petitioner and the Intervenor deny engaging in the conduct in question, and the Petitioner submitted three witnesses in support of this position.

Witness No. 1, an alleged agent of the Petitioner, relates that the subject of union dues was discussed at meetings of employees during the organizing campaign and that it was explained to them that the reference made by the Employer to "double dues" meant that when the employees of one of the "Big Three" automobile manufacturers were on strike a special international convention was called and voted on whether to increase dues.

Witness No. 2, an employee, states that no agent or representative of the Petitioner ever told the employees that their dues would be less than what its constitution and bylaws required or what a special convention might determine under the constitution and bylaws. He also states that the Petitioner's agent told the employees at the meeting it conducted that if they signed an authorization card before a contract was entered into, they would pay no initiation fee, but that after a contract was signed a deadline would be set and anyone who "signed up" after that would have to pay an initiation fee.

Witness No. 3 relates that during the organizing campaign the Petitioner's representatives told the employees that dues would be a minimum of $5 per month or an amount equal to two hours pay per month and that some of the locals of the Petitioner in existence at the time were paying double dues because of the strike then in existence against General Motors, but that the employees of the Employer would not pay double dues because there was no contract in existence at that time.

It is clear from the facts of this case, including Exhibits D, reference to C and E, that there were no misrepresentations concerning dues to be paid by employees if the Petitioner represented them other than what was represented to them. The evidence is clear, and Exhibit D - which was distributed to employees - shows that the Petitioner represented that the dues would be a "minimum of $5 per month, or two hours pay, excluding shift premium and overtime pay." (Emphasis supplied.) Exhibit D, considered in conjunction with Exhibit F, clearly shows that the Petitioner meant what was stated when it said that the dues would be a "minimum" of $5 or two hours pay, etc. The statements made were not a misrepresentation of the facts, let along a "substantial misrepresentation" of fact as required by Hollywood Ceramics Company, Inc., supra.

The reference to a waiver of initiation fees for those who were working at the time of the election, or subsequent to the election, and at a time before a collective-bargaining agreement was entered into, is clearly within the rule enunciated in DIT-MCO, Incorporated, 163 NLRB 1019, 1021, 1022, which specifically permits such waiver.

In view of the foregoing, the undersigned concludes that the conduct alleged in 2(d) does not warrant setting aside the election, and, accordingly, recommends that it be overruled.

With respect to 2(e), the Employer contends that the Petitioner and/or the Intervenor told employees that the Employer knew which of them had signed union cards and indicated that it would take disciplinary action against them and had used unlawful means to obtain such information.

No statements of employees were presented in support of this contention; however, the Employer did submit a handbill

distributed by Petitioner on December 30, 1970,[9] which includes, inter alia, the following statement:

3. They know that a majority of you have signed UAW cards and now they want to divide you in your efforts.

The Intervenor denies that it engaged in the conduct in question. The Petitioner also denies that it engaged in such conduct. However, it does admit that the handbill described was distributed on December 30, 1970.

This Objection must be considered in the context in which the statement described above was made. The handbill was distributed subsequent to a demand for recognition by the Petitioner, the filing of the petition herein, and the date of execution of the Stipulation.[10] It is clear that the statement referred to above was made after the Petitioner had made a written demand for recognition, which included the statement, "This is to advise you that a majority of your employees in an appropriate bargaining unit at Shawnee Plastics, Inc., Kuttawa, Kentucky have designated the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), as the exclusive representative of all such employees . . . " The statement does not contain any reference to the fact that the Employer knew, by name, which employees had signed authorization cards and no reference was made as to any "unlawful means" that the Employer used to obtain such information. Nor is any reference made to disciplinary action

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9/ Attached hereto as Exhibit F

10/ Administrative notice is hereby taken of the petition and Stipulation in this case. Further, notice is taken of the demand for recognition made by the Petitioner on November 16, 1970, and acknowledgment of it by the Employer on November 18, 1970.

by the Employer in retaliation for employees having signed authorization cards on behalf of the Petitioner. The statement ". . . and now they want to divide you in your efforts" is not an allegation that the Employer would discipline the employees for their membership in the Petitioner.

Upon the basis of the foregoing, it does not appear that there is a "substantial misrepresentation" of the facts and, therefore, insufficient evidence exists to set aside the election based on this Objection. Hollywood Ceramics Company, Inc., supra. The undersigned concludes, therefore, that no substantial or material issues of facts are raised by this allegation and recommends that it be overruled.

As to 2(f), the Employer contends that the Petitioner and/or the Intervenor indicated to employees that automatic increases in wages and working conditions would result if they were selected, thereby falsely telling them the rights which are obtained as the result of an election victory.

The Employer failed to submit any statement of employees and/or supervisors in support of this allegation; however, it did submit six handbills distributed by the Petitioner and Intervenor. [11] Exhibit B is a handbill distributed by the Intervenor and addressed to all employees of Shawnee Plastics Company, Kuttawa, Kentucky, dated October 29, 1970. In that handbill the following statements are made:

> Just a few of the many benefits of union membership are: higher wages, paid holidays, and vacation hospitalization insurance and pension benefits.

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[11] Attached hereto as Exhibits B, G, H, I, D, J.

All of these benefits and many more can be, and are, won through union membership and collective bargaining.

Exhibit G was distributed by the Intervenor on September 4, 1970 and states, in relevant part, the following:

Most of IAM contracts contain the following provisions: Then enumerates benefits contained in "most of IAM contracts."

Exhibit H was distributed by the Petitioner on December 10, 1970 and contains the following quotation:

When you vote for UAW, you will be opening the door for better wages, fringe benefits, and working conditions. Your vote for UAW will guarantee you a legal, binding contract with Shawnee Plastics, and will give you the RIGHT to negotiate your wages, hours of work, working conditions, and other conditions of employment.

Exhibit I was distributed by the Petitioner on January 5, 1971 and states that there is a "program" enjoyed by 1,800,000 UAW workers. It then states:

This program has been proven and the better wages, fringe benefits and working conditions are a matter of record. We have never hidden our program from the other 1,800,000 UAW members, and we can see no reason to hide anything from you.

Exhibit D is a handbill distributed by the Petitioner on January 7, 1971 and poses the following question and answer:

Q. Why do UAW members say, "It doesn't cost to belong to UAW . . . it pays?

A. Because a UAW contract will provide better wages, fringe benefits, job security, and improved working conditions, more paid holidays, longer vacations with

pay, better insurance coverage, and safer working conditions PLUS many other types of benefits.

Exhibit J is a handbill distributed by the Petitioner on January 17, 1971 and contains the following statement:

. . . REAL BARGAINING POWER is the means by which you can . . .

RAISE YOUR WAGES

GUARANTEE TOP RATES OF PAY WITHIN A SPECIFIED PERIOD OF TIME

GET JOB SECURITY THROUGH SENIORITY PROTECTION

OBTAIN SUPPLEMENTAL UNEMPLOYMENT BENEFITS (LAYOFF PAY)

INITIATE COST-OF-LIVING ALLOWANCES

SECURE GUARANTEED RECALL RIGHTS IF LAYOFF SHOULD OCCUR

HAVE AN HONEST GRIEVANCE PROCEDURE WITH ARBITRATION

IMPROVE HOSPITAL AND MEDICAL INSURANCE COVERAGE

ASSURE FAIR TREATMENT ON PROMOTIONAL OPPORTUNITIES

After careful examination and consideration of the contents of the pre-election campaign material in question, the undersigned is of the opinion that they are free of any alleged claims of "automatic increases in wages and working conditions . . ." thereby falsely stating to employees the rights that are obtained as a result of an election victory. As such, they constitute the type of non-coercive campaign propaganda which the Board will not police or censor but leaves to the good sense of the voters to evaluate. 12/

12/ The Gummed Products Company, 112 NLRB 1092; Hollywood Ceramics Company, Inc., supra.

In view of all of the foregoing, the undersigned concludes that no substantial or material issues of fact are raised by Objection 2 and hereby recommends that it be overruled.

OBJECTION NO. 3:

The Employer contends that the conduct alleged in Objections Nos. 1 and 2(a)-(f) indicates a course of unlawful conduct involving interrogation, threats, restraint and coercion within the meaning of the Act and that the misrepresentations made are sufficient to require setting aside the election.

In view of my findings on Objections Nos. 1 and 2(a)-(f), supra, the undersigned concludes that this Objection raises no substantial or material issues of fact and, therefore, recommends that Objection No. 3 be overruled.

OBJECTION NO. 4:

The Employer contends that the specific acts enumerated in Objections Nos. 1, 2, and 3, and other acts and conduct, prevented employees from making a free and uncoerced choice in the election.

This last Objection is simply a catch-all allegation. In this connection, the Employer submitted evidence which allegedly shows that some employees of the Employer were paid for their organizing efforts on behalf of the Petitioner. The foregoing circumstance, if true, could constitute objectionable conduct on the part of the Petitioner. Although not specifically set forth in the Objections, conduct disclosed during the course of the investigation may be considered by the Board Aeronca Manufacturing Corporation, 121 NLRB 777, Carter-Lee Lumber Company, 119 NLRB 1374; and International Shoe Company, 123 NLRB 682

The Employer submitted three documents in the form of letters mailed to it by Loren F. Weiss, President and General Manager of Pressure Castings, Inc., Ralph E. Zimmerman, Jr., a representative of Ralph E. Zimmerman and Sons Manufacturers Representatives, and Eugene Denney, a resident of Eddyville, Kentucky.

Denney relates that he had a conversation with a Bernie Ware, who is the owner and operator of the Twin Tiki Restaurant in Eddyville, Kentucky. He alleges that Ware told him on or about February 24, 1971, that allegedly "someone agreed to pay $1,000 if they (presumably one of the unions) were successful in their efforts to organize a union." Further, Denney states that Ware "indicated that ten people were to share this amount equally."

Ralph E. Zimmerman states that he had two separate conversations with Bernie Ware in which Ware told him that "some Shawnee employees were paid $100 each to help organize and establish the UAW in our recent election." Zimmerman also says "Mr. Ware further stated that the number so employed by the UAW for this task numbered nine men and two women each receiving $100." He states that with him at the time Ware was talking were Bob Zimmerman, Ralph E. Zimmerman and Loren F. Weiss.

Weiss states that he was at the Twin Tiki Restaurant in Eddyville, Kentucky on January 21, 1971 with Ralph Zimmerman, Sr., Ralph Zimmerman, Jr., and Bob Zimmerman, when he engaged in a conversation with Bernie Ware. Ware allegedly told Weiss and the others, "That at least nine employees at Shawnee Plastics had received a $100 payment for their efforts in helping the UAW to win the NLRB election the previous week."

During the investigation an agent of the undersigned obtained a sworn statement from Bernie J. Ware, owner and operator of the Twin Tiki Restaurant in Eddyville, Kentucky, in which he states that he did not witness anything in the campaign personally, but that he heard a few things from some of the employees that he didn't know. He states that he "at no time personally saw or heard any representative of any union giving money to any employee of the Employer." He states, "There was a rumor that there were some employees being paid to help organize the employees, but I did not personally hear anything like this occur or see it happen." He further states, "All the things I have said above (in the affidavit) were things that I overheard employees talking about and things they said they had heard or that other people say. None of the ones involved were representatives of either union - only employees of the Company."

The Petitioner and the Intervenor deny engaging in any activity alleged in this Objection.

The foregoing makes it evident that there is no substantive evidence to establish the matters related. They consist of hearsay and double-hearsay evidence, including the source of the material related by Weiss, Zimmerman and Denney.

In view of my findings and recommendations with respect to Objection Nos. 1, 2 and 3, above, I hereby recommend that the first part of Objection No. 4 be overruled. The second part of Objection No. 4 relating to alleged payment of money to employees of the Employer for efforts during the organizing campaign raises no substantial or material issues of fact and I, therefore, recommend that it also be overruled.

CONCLUSIONS AND RECOMMENDATIONS TO THE BOARD:

For the reasons set forth above, the undersigned recommends that the Board overrule the Employer's Objections in their entirety and issue an appropriate Certification of Representative.

Dated at Cincinnati, Ohio this 6th day of October, 1971.

/s/ John C. Getreu
Regional Director
National Labor Relations Board
Region 9
2407 Federal Office Building
550 Main Street
Cincinnati, Ohio 45202

Attachments

EXHIBIT F

EXCEPTIONS

Comes now the Employer in the above-entitled case and pursuant to Board Rules and Regulations Section 102.69 and files exceptions to the Regional Director's report of objections, objections to election and recommendations to the Board as follows:

1. Prior to stating its specific objections to the Regional Director's report Employer must ask that the Board consider the entire file before it since as a general exception Employer would state that the Regional Director's conclusion after a voluminous report at page 19 to the effect that he recommends the Board overrule Employer's objections in their entirety and that no hearing be held on said objections is erroneous and contrary to law in that it treats each objection as a separate item and thereby ignores the relationship between and among these objections and thus all of the circumstances involved in this proceeding as is required under the Act. Sonoco Products Co. v. NLRB 399 Fed. 2nd 825 (CA-9, 1968); Home Town Foods, Inc., v. NLRB, 379 Fed. 2nd 241 (CA-5, 1967). It would seem strange indeed were the Regional Director to be sustained in this matter in light of the immense amount of conduct reported by him in the body of his report particularly when the Regional Director compares a great deal of conflicting evidence as it appears from witnesses' statements submitted by the Employer and counter-statements submitted by the Petitioner. In sum, under the Board's own Rules and Regulations, the face of the report indicates ample grounds and in fact would require the holding of a hearing in this case since there are obviously substantial and material issues of fact that must be resolved by hearing.

2. Employer specifically excepts to the finding of the Regional Director at Page 7 of his report overruling Employer's objection No. 1 since his conclusion at this point does not follow from the evidence set out at Page 3 through 7 of his report since there is an indication in the evidence of a sharp conflict between the evidence submitted by the Employer and the Petitioner. Certainly the requirements of extreme specificity as far as Employer's evidence is concerned is sharply contrasted with the very vague and general statements made by those making the statements on behalf of Petitioner. It would seem as if the Regional Director has more concern for the Section 7 rights of those who are in favor of the union than for those who were harrassed and coerced by it thereby ignoring the requirements of Section 7 of the Act. See International Ladies Garment Workers v. NLRB 366 U.S. 731 (1961). Similarly the Regional Director's citation of cases concerning a requirement of a showing of agency at page 6 of his report are not comparable on their facts to the instant case and the same is true as to the act of coercion on the part of an admitted union agent set out at pages 6 and 7 of the report and that the authority cited in support of the Regional Director's contention that the union agent's remark was not coercive does not fit the facts in the instant case.

3. Employer specifically excepts to the concluding finding of the Regional Director at page 17 of his report that Employer's objection No. 2 and all subparts thereof be overruled, since once again the Regional Director fails to place this conduct in any factual matrix but instead isolates the numerous instances of union's misconduct as a means of avoiding the obvious which is, of course, to overrule Employer's objections in every respect.

a. Thus in his discussion of Employer's objection 2(a) and contrary to law the Regional Director, as he did uniformly throughout his report, resolved any factual conflict in favor of Petitioner and against the Employer thereby indicating a bias and prejudice in favor of Petitioner contrary to the intent of the Act. Similarly the Regional Director cites a case at this point factually unrelated to the instant case in that in this case threats were widespread as opposed to the case cited in his report.

b. In overruling Employer's objection based on a threat of plant closure the Regional Director totally ignores the evidence submitted by it to the Regional Director in the form of an affidavit by James F. Claybourn, the Personnel Director of Employer, and Exhibit "B" attached to said affidavit being a handbill distributed among the employees of Employer by Intervenor showing that there can be little doubt about the fact that at least Intervenor thought unionization would result in plant closure at Employer. Unless two wrongs made a right it would seem this handbill in itself would prima facie warrant setting aside the election. This is so because misconduct, regardless of its origin, requires that an election be set aside. Caroline Poultry Farms, Inc., 104 NLRB 255, 256 (1953) and cases cited.

c. The Regional Director's decision to overrule Employer's objection 2(c) which in turn is based on an admitted misrepresentation of the rights of employees under the Act is most difficult to understand. Why the Regional Director ignores the teachings of Hollywood Ceramics, Inc., 140 NLRB 221 (1963) after citing the case is difficult to understand. The point being that the case holds that no matter how artful a misrepresentation is, it is still a misrepresentation, and it would seem that Petitioner

herein was in an authoritative position to know that when it failed to inform employees of Employer of their right to refrain from engaging in union activity that this "oversight" was intentional and impossible for employer to rebut.

d. In overruling Employer's objection 2(d) and through a rigorous exercise of questionable logic, the Regional Director has in fact tried to firm up the union's clear misrepresentation of fact concerning its fee and dues structure. As shown by Exhibit "E" attached to the affidavit of James F. Claybourn referred to in the above, the facts are that the union was telling the employees at Shawnee Plastics one thing as prospective members while it was telling the employees through its newspaper who were already members another as to their fee and dues obligations. Similarly it would seem that the Board's decision in DIT-MCO, Inc., 163 NLRB 1019 (1967) is in fact being used by unions as a means of interjecting false and coercive assertions as to the union obligation of rpospective union members to organizing campaigns. It is because of this that Employer would assert that the position taken by the Board in DIT-MCO is contrary to the Act and violates the constitutional rights of its employees and that the Board should reconsider its position on such matters and find and conclude that misrepresentation of dues, fee waivers, etc., be treated as any other misconduct within the meaning of the Act.

e. In overruling Employer's objection 2(e) the Regional Director seems to conclude that because the Petitioner made certain general statements admitting a certain amount of knowledge on the part of Employer as to who belonged to the union that the Petitioner's assertion in its handbill that were it not selected as the bargaining agent unspecified action would be taken

against those who supported the union either did not occur or was somehow innocent. This seems most unusual, particularly in light of the numerous statements submitted by Employer to the Board with reference to threats against employees.

f. Congress in amending Section 7 of the Act indicated an intent to treat the rights of employees to engage or to refrain from engaging in union activities as equal rights. As the Board knows, it would be a serious unfair labor practice for an employer to make promises as to benefits during an election campaign and why it sanctioned union's statements similar to those set out in the Regional Director's report at pages 15 through 17 thereof as permissible forms of union electioneering is difficult to understand. Such tactics are quite misleading to employees since they do not understand that once a union wins an election all it obtains is collective bargaining rights and not to require employer concessions or to automatically obtain increases in employee wage and fringe benefits. In fact as the Board knows, Section 8(d) of the Act does not require concessions from either part during the process of collective bargaining. This is what makes it difficult for Employer to accept the validity of the Regional Director's decision to overrule its objection 2(f).

4. In overruling Employer's objection No. 3 the Regional Director refers to its findings with reference to objections No. 1 and 2 including all subparts thereof. It would serve no useful purpose for Employer to restate its position on these objections other than at this point to refer the Board to the above observations and to incorporate these observations by reference into this Exception.

5. It would seem strange indeed for the officer charged with the duty of implementing the statutory mandates of the Act

to conclude that statements submitted to him concerning substantial monetary inducements to employees of Employer by the Petitioner herein for their support during the election campaign would not require a hearing for the purpose of calling witnesses by subpoena and requiring them to submit to cross examination. In sum, the Regional Director at pages 17 through 19 of his report sets out the facts that three statements submitted to him by the Employer (admittedly containing hearsay) were confirmed by his own agent when they were investigated yet fails to take the matter any further. It would seem that substantial and material issues of fact as required by the Board's Rules would not for purposes of a hearing require more than a show-cause hearing under the Federal Rules of Civil Procedure and if this is the case hearsay is admissible in making it a determination as to probably cause. Similarly in this portion of his report the Regional Director ignores a statement from an employee of Employer, Greta Pinnegar, to the effect that she was told by fellow employees that they were paid by the UAW to work for it. Similarly this statement shows the inexcusable tactics used by Petitioner in that this same employee states that she had heard in the plant that if anyone told what went on during the campaign the union would "get them." It would seem that the lack of concern based on a technical application of the hearsay rule by the Regional Director would be under these facts very difficult to understand.

6. Finally, some general observations should be made with reference to the fact that in the file now before the Board there is a great deal of evidence indicating the employees of Employer were quite frightened by the union thus the statements or affidavits from employees contain notations to the effect that the employee involved was afraid to say anything for fear of reprisal.

This type of atmosphere in and of itself would seem to at least require the Board to set aside the election since there is an uncontradicted showing of an absence of the laboratory conditions requisite to the holding of a fair election. General Shoe Corporation, 77 NLRB 124 (1948). It would seem that the many affidavits and exhibits submitted to the Regional Director by the Employer have been selectively read with the aim in mind of sustaining Petitioner's conduct instead of protecting the Section 7 rights of Employer's employees.

WHEREFORE, Employer asks that its Exceptions to the Regional Director's Report on Objections, Objections to Election and Recommendations to the Board issued on October 6, 1971, be sustained; that the election held herein on January 14, 1971, be set aside, declared null and void; and that a new election be held herein or in the alternative that this matter be remanded to the Regional Director for the purpose of holding a hearing on the substantial and material issues of fact raised by Employer's objections to the election held herein and for all further and proper relief in the premises.

Respectfully submitted,
KAHN, DEES, DONOVAN & KAHN

By /s/ Joseph A. Yocum

KAHN, DEES, DONOVAN & KAHN
305 Union Federal Building
Evansville, Indiana
Telephone (812) 423-3183
Attorneys for Employer

EXHIBIT G

DECISION AND CERTIFICATION OF REPRESENTATIVE

Pursuant to a Stipulation for Certification Upon Consent Election executed by the parties and approved by the Regional Director for Region 9 of the National Labor Relations Board on December 9, 1970, an election by secret ballot was conducted in the above-entitled proceeding on January 14, 1971, under the direction and supervision of the Regional Director. Upon the conclusion of the election, a tally of ballots was furnished the parties in accordance with the Board's Rules and Regulations.

The tally of ballots shows that there were approximately 203 eligible voters and that 196 ballots were cast, of which 122 were for the Petitioner, 3 for the Intervenor, 67 against the participating labor organizations, 3 were challenged, and 1 was void. The challenged ballots were not sufficient in number to affect the results of the election. Thereafter, the Employer filed timely objections to conduct affecting the results of the election.

The Regional Director completed an investigation of the objections and, on October 6, 1971, issued and served on the parties his Report on Objections to Election and Recommendations to the Board. In his report, the Regional Director recommended that the Employer's objections be overruled in their entirety and an appropriate Certification of Representative issue. Thereafter, the Employer filed timely exceptions to the Regional Director's report and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in connection with this proceeding to a three member panel.

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein

2. The Petitioner and the Intervenor are labor organizations claiming to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. We find that the following employees, as stipulated by the parties, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All production and maintenance employees, including inspectors, at the Employer's Kuttawa, Kentucky, operation, but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

5. The Board has considered the entire record in the proceeding, including the Regional Director's Report, and the exceptions and brief, and hereby adopts the Regional Director's findings and recommendation that the Employer's objections be overruled in their entirety. 1/

1/ The Employer's exceptions, in our opinion, raise no substantial issues of law or fact which would warrant a hearing. Chairman Miller is of the opinion that while evidence of union threats of job loss can be sufficiently serious to warrant a hearing, there is no evidence in the present proceeding that any threat of loss of jobs was made by any agent of the participating Unions. Cf. Janler Plastic Mold Corporation, 186 NLRB No. 80, footnote 3.

Accordingly, as we have overruled the Employer's objections in their entirety and the tally of ballots shows that the Petitioner has received a majority of the valid ballots cast, we shall certify it as the exclusive bargaining representative for the employees in the appropriate unit.

CERTIFICATION OF REPRESENTATIVE

IT IS HEREBY CERTIFIED that a majority of the valid votes has been cast for International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, and that, pursuant to Section 9(a) of the Act, the said labor organization is the exclusive representative of all the employees in the unit found appropriate for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

Dated, Washington, D.C., December 16, 1971.

Edward B. Miller, Chairman

John H. Fanning, Member

Howard Jenkins, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

EXHIBIT H

EXCEPTION

Employer excepts to the Board's rulings on its objections as follows:

1. The employer's objections filed herein raise substantial, material issues of fact requiring a hearing.

2. The Board's rulings on employer's objections are not supported by substantial evidence on the record as a whole, requiring that the election held herein be set aside.

3. The Board has failed to explicate the reasons for its decision herein and this is contrary to the Act, the rulings of the Supreme Court of the United States with reference to such obligation, and therefore due process of law.

4. The above are made with reservation of rights concerning employer's exceptions to the Regional Director's report filed herein and the issues of law or fact raised thereby.

WHEREFORE, employer prays that the Board reconsider its rulings herein and/or explicate the reasons for its decision herein.

Respectfully submitted,
KAHN, DEES, DONOVAN & KAHN

By /s/ Joseph A. Yocum
Attorneys for Employer

KAHN, DEES, DONOVAN & KAHN
305 Union Federal Building
Evansville, Indiana 47708
Of Counsel

EXHIBIT I

ORDER DENYING PETITION

On December 16, 1971, the National Labor Relations Board issued a Decision and Certification of Representative [1/] in the above-entitled proceeding in which it overruled the Employer's objections to the conduct of the election and, as the Petitioner had received a majority of the valid ballots cast, certified the Petitioner as the exclusive bargaining representative for the employees in the appropriate unit.

Thereafter, on December 28, 1971, the Employer filed an Exception to the Board's rulings on its objections and requested that the Board reconsider its rulings and/or explicate the reasons for its decision.

The Board having duly considered the matter,

IT IS HEREBY ORDERED that the Employer's petition for reconsideration and/or explication of the reason for the Board's decision be, and it hereby is, denied as it contains nothing not previously considered by the Board.

Dated, Washington, D.C., January 11, 1972,

By direction of the Board:

John C. Truesdale

Deputy Executive Secretary

1/ Unpublished.

The following affidavits are not a part of the certified record in this case; they are printed at this place in the appendix at the request of the respondent for the convenience of the Court.

Law Offices
KAHN, DEES, DONOVAN & KAHN
305 Union Federal Building
Evansville, Indiana 47708

March 26, 1971

Mr. D. Patton Pelfrey, Attorney
National Labor Relations Board, Region 9
2407 Federal Office Building
550 Main Street
Cincinnati, Ohio 45202

Re: Shawnee Plastics, Inc.
Cases Nos. 9-RC-8823 and 9-CA-6040

Dear Mr. Pelfrey:

Enclosed please find three additional affidavits with reference to the objections filed by the employer in the R case.

With reference to the unfair labor practice case, I am in the process of discussing the possibility of settlement of the matter and would inquire if you have any suggestions along these lines.

Very truly yours,

KAHN, DEES, DONOVAN & KAHN

JAY:ET

Copy to Company

STATE OF KENTUCKY)
) SS:
COUNTY OF Lyon)

James F. Claybourn, being duly sworn upon his oath, deposes and says:

1. That he gives this affidavit in support of company objections filed to an NLRB conducted election held on January 14, 1971, being Case No. 9-RC-8823, Shawnee Plastics, Inc., and that in his position as Personnel Director of the company, he has first hand knowledge of the following facts.

2. That on the morning of the election he came to the company plant premises in Kuttawa, Kentucky and discovered that throughout the plant, including the ladies' and mens' rest rooms, and the lunch area, which was used as the polling area for the election, there were plastered round decals bearing the inscription "Vote UAW." Because the time was so close to the opening of the polls for the election, an attempt was made to remove these decals from the walls of the lunch room. However, as the attached pictures show, not all of these decals were completely removed, and in fact some were not removed at all, as shown by the pictures attached hereto as Exhibits 1 through 7. Also, a large clock was located in the polling area, and these decals had been pasted on the clock at the numerals 12, 3, 6 and 9, and that due to the nature of the decals, all that could be removed was the "Vote UAW" with the rest of the circular decal remaining on the clock, and it is difficult to see how employees could have failed to know what these circular imprints meant.

3. Also, deponent would state that no deal was ever made with the IAM with reference to organizing the employees of Shawnee Plastics, Inc. at Kuttawa or making a move from

Evansville to Kuttawa. By this, it is stated that nothing illegal or in violation of the law was done with reference to whether the IAM organized the plant either in Kuttawa or the move from Evansville to Kuttawa.

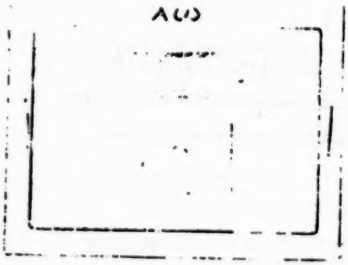
Further deponent sayeth not.

James F. Claybourn

Subscribed and sworn to before me, a notary public in and for said county and state, this 25 day of March, 1971.

N. R. Sexton
Notary Public

My commission expires:
June 26, 1971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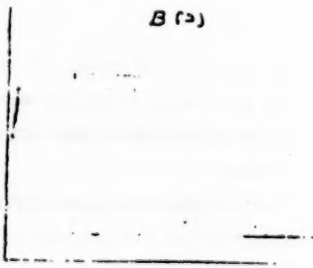
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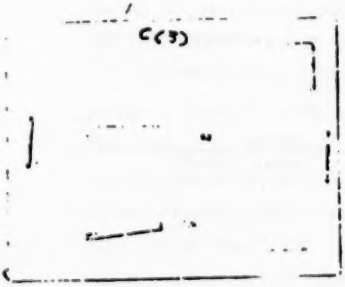
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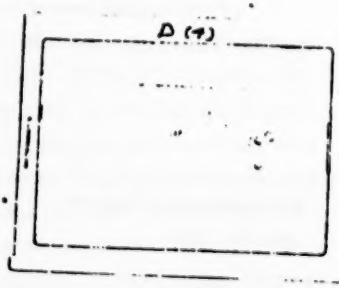
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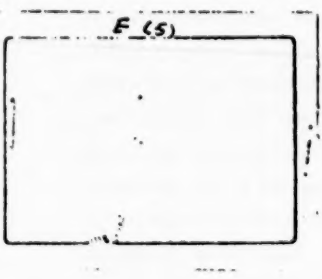
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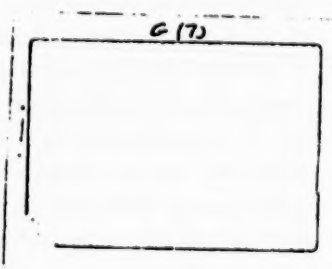
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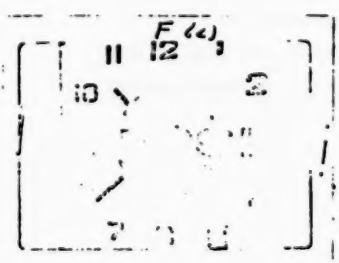
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March 24, 1971

At approximately mid-day on January 11, 1971, Betty Guess called me at the Personnel Office. She had been absent from work due to contact dermatitis on her hands -- job related, and she informed me of the date on which she would return to work. She asked if she could vote in the forthcoming Union election.

She stated that a few days prior to January 11, 1971, she had been visited at her home by Donna Joyner and a representative of U.A.W. When she asked the man's name she believed he said Puckett, and she was sure that his companion was Donna Joyner. Mrs. Guess said that they were concerned because she would not wear a U.A.W. button.

Mrs. Guess stated that they (Donna Joyner and the Union representative) said she was a hold up concerning U.A.W. support and that they would make it hard on her on her job if and when the Union came into the Company.

Mrs. Guess stated that she did not appreciate their coming to her home and talking to her as they did. She said she had a right to vote as she felt.

I asked Mrs. Guess if she had any objection to my relating her story to the Plant Manager, Gene Lester. She said she did not.

Mrs. Guess again stated that the U.A.W. representative did tell her that she must sign a Union card or suffer the results for not signing a card and supporting U.A.W. She said the U.A.W.

representative said that they would make it hard on her on the job if she did not support U.A.W.

/s/ N. D. England

State of Kentucky
County of Lyon,

The foregoing statement subscribed and sworn to before me at Kuttawa, Kentucky, this the 25th day of March, 1971.

/s/ N. R. Sexton
Notary Public
My commission Expires June 26, 1971

March 24, 1971

At approximately 4:30 P. M. on January 29, 1971, Marie Crider came to my office in the Personnel Department and asked if she could ask me a question. I told her she could.

She handed me a union card for U.A.W. and stated that they had told her if she did not sign the card she would be charged $30.00 to join the Union after they obtained their contract. I told her that as far as I knew she did not have to sign a Union card since we had no contract as of that date and we were unable to deduct any Union dues. She stated that she knew there was no contract and had no misunderstanding on that point.

I asked her if she had received the card from someone in the plant and she replied that she had. I asked her if she cared to tell me who gave her the card and she stated that she would rather not.

/s/ N. D. England

State of Kentucky
County of Lyon,

The foregoing statement subscribed and sworn to before me at Kuttawa, Kentucky, this the 25th day of March, 1971.

/s/ N. R. Sexton
Notary Public

My Commission Expires June 26, 1971

Law Offices
KAHN, DEES, DONOVAN & KAHN
305 Union Federal Building
Evansville, Indiana 47708

March 17, 1971

Mr. D. Patton Pelfrey
Field Attorney
National Labor Relations Board, Region 9
2407 Federal Office Building
550 Main Street
Cincinnati, Ohio 45202

Re: Shawnee Plastics, Inc.
Case No. 9-RC-8823

Dear Mr. Pelfrey:

Enclosed please find two additional statements in the above case with reference to the objections.

We are in the process of preparing our final evidence in this case and you will be receiving it from us some time in the early part of next week.

Very truly yours,

KAHN, DEES, DONOVAN & KAHN

JAY:ET

Copy to Company

STATEMENT

My name is Mildred Jenkins and I am employed at Shawnee Plastics and I know this interview is being conducted by a company attorney with reference to objections filed by the company concerning an election held by the N. L. R. B. at the company on January 14, 1971. I understand I do not have to give out any information and I can give out as much information as I see fit. I also know this statement must be my free and voluntary act and that, regardless, nothing I say or do will have any effect on my job at Shawnee. I understand that if I give any information to the company and anything comes of it through the union or otherwise that the company will protect me and my job.

/s/ Mildred Jenkins
3/15/71

I have heard that around election time someone was threatened, but I don't know who told me or who was threatened.

The only thing I feel was pressure was after the election union people said I should sign a dues deduction card or I would have to pay initiation fees. Some people signed because they didn't want to pay the fee.

/s/ Mildred Jenkins

STATEMENT

My name is Greta Pinnegar and I am employed at Shawnee Plastics and I know this interview is being conducted by a company attorney with reference to objections filed by the company concerning an election held by the N. L. R. B. at the company on January 14, 1971. I understand I do not have to give out any information and I can give out as much information as I see fit. I also know this statement must be my free and voluntary act and that, regardless, nothing I say or do will have any effect on my job at Shawnee. I understand that if I give any information to the company and anything comes of it through the union or otherwise that the company will protect me and my job.

/s/ Greta Pinnegar
3/15/71

Employees who passed out union literature said the U. A. W. paid them to work for it. I don't know how much they got paid.

I have heard that if anyone tells what went on during the campaign the union will get them. I am not going to name any names.

During the campaign, the U. A. W. said the company paid off the I. A. M. to get rid of it in Evansville.

On election day, employees who favored the union asked me who I voted for. They asked me right after I left the poll. When I wouldn't tell them, they gave me the cold shoulder.

/s/ Greta Pinnegar

[She told me she was afraid to tell me anymore. Her uncle also knows something but she wouldn't give me his name.]

/s/ Thomas O. Magan

Law Offices
KAHN, DEES, DONOVAN & KAHN
305 Union Federal Building
Evansville, Indiana 47708

March 12, 1971

Mr. D. Patton Pelfrey
Field Attorney
National Labor Relations Board, Region 9
2407 Federal Office Building
550 Main Street
Cincinnati, Ohio 45202

Re: Shawnee Plastics, Inc.
Case No. 9-RC-8823

Dear Mr. Pelfrey:

Enclosed please find copies of statements of four people obtained by the undersigned in support of the employer's objections in the above case. Please be advised that my stay in Kuttawa was cut short by an unforeseen circumstance, and that I am returning to the company on Monday, March 15th to continue our investigation of this matter. You should note, however, that the enclosed statements do indicate some threats with reference to support for the allegations contained in our formal objections. I am advised by the company, however, that more complete and relevant information is still available.

I guess I am asking for some additional time, although to date you have in your possession the statements with reference to the $100.00 payments, the enclosed statements and the exhibits and the affidavits filed by supervisory personnel at the company.

I do plan, however, to submit additional statements with reference to all of the above and therefore would request some additional time in which to make this matter available to you. I am wondering if you have contacted the Union about the payments.

Very truly yours,

KAHN, DEES, DONOVAN & KAHN

JAY:ET
Copies to Company

My name is Robert Cardin and I am employed at Shawnee Plastics and I know this interview is being conducted by a company attorney with reference to objections filed by the company concerning an N. L. R. B. election held at the company on January 11, 1971. I understand I did not have to give out any information and I can give out as much information as I see fit. I also know any statement I give must be my free and voluntary statement and that, regardless, nothing I say or do will have any effect on my job at Shawnee. I understand that if I do not give any information or give some information to the company and anything comes of it through the union or otherwise that the company will protect me and my job.

/s/ Robert L. Cardin

I came to work for the company in September of 1970 and it was sometime after that that the unionstalk came up. Generally it was in the cafeteria at the company during lunchtime. I was asked to sign a card and refused to sign. It was during this time--before the election -- that I began to receive telephone calls at home after work. Sometimes it would be 1:00 or 2:00 o'clock in the morning. The people would not say who they were, but they would make threats like something would happen to someone in my family if I continued to be against the union. Before the election I would drive to work and outside the plant pressure would be placed on us by the people for the union and sometimes by union men from outside the company. I know one time I drove up to work and "Big" Puckett from the union told me, "You'd better remember us, little fellea, or we are going to remember you." I drove on after this. Another day, I decided to go another way into the plant and when I did this another employee asked me how

I got in and told him it didn't make any difference He acted like he didn t like the idea. I know that before the election people that were known to be against the union had a hard time when they went in and out of the plant in that the ones that were against it would have a little gravel thrown at their cars and so on. I didn t appreciate all of this, but it was what they were doing.

I have read the foregoing statement and it is true to the best of my knowledge and belief, March 9, 1971.

/s/ Robert L Cardin

Right after the election I was told if I didn't sign one of their cards I would have a rough time. Later on, after they had an election for union officers I was told if you didn't sign one of their cards, you would have to pay cash money to belong to the union and wouldn't be allowed to have the company take the money out of your check.

/s/ Robert L. Cardin

My name is Nancy Southern and I am employed at Shawnee Plastics and I understand that this statement is being taken by a company attorney with reference to the company's objections to an election. I understand that by making this statement I am not under any obligation and that no action will be taken against me because of my refusal or agreement to take a statement. I have been advised that I can make a statement or not make a statement as I see fit and that if I do make a statement it must be my free and voluntary act.

My job is in accounting at the company. I came to work on the morning of the election, which was around January 14, 1971. I have been told there was a big crowd around the front of the plant on this morning, but this was before I got to work. The plant workers come in at 7:00 and we, the office workers, come in at 8:00.

I didn't attend any union meetings or anything like that. There were remarks made to my mother about not being for the union, since the people in the plant felt she was not for it because I worked in the office.

About all I know about the morning of the election is the fact that my mother told me that when she came to work at 7:00 people tried to put union stickers on her and when she told them not to, they did it anyway. She works in the plant and her name is Dorothy Holsapple.

It has been my policy to keep my mouth shut since it seems like the best idea.

I have read the foregoing statement and it is true to the best of my knowledge and belief, March 9, 1971.

/s/ Nancy Southern

My name is Linda Lawson and I am employed at Shawnee Plastics and I know this interview is being conducted by a company attorney with reference to objections filed by the company concerning an election held by the N. L. R. B. at the company on January 14, 1971. I understand I do not have to give out any information and I can give out as much information as I see fit. I also know any statement I give is my free and voluntary act and that, regardless, nothing I say or do will have any effect on my job at Shawnee.

I understand that if I do give any information to the company and anything comes of it through the union or otherwise that the company will protect me and my job.

/s/ Linda R. Lawson

In my statement I would prefer not to name any names, but in December of 1970 after I came back to work when my son was sick -- he was in an accident and broke his back -- I was asked to wear a union button and refused. Then, I was asked to sign a union card by a fellow employee and when I refused I was told that if I didn't sign a card and the union came in, and it was going to come in, things would go hard or they would make it hard on me I never attended a union meeting.

Recently, after the election, it was after February 6, 1971 I was told those who did not sign would have to pay a $50 00 initiation fee or as high as $50 00. After the union came in, they came around with the yellow union cards and said if you did not sign then it would go as high as $50.00 for an initiation fee

I have read the foregoing statement and it is true to the best of my knowledge and belief, March 9, 1971.

/s/ Linda R. Lawson

[3c]

My name is Betty Guess and I am employed at Shawnee Plastics and I know this interview is being conducted by a company attorney with reference to objections filed by the company concerning an election held by the N. L. R. B. at the company on January 14, 1971. I understand I do not have to give out any information and I can give out as much information as I see fit. I also know any statement I give is my free and voluntary act and that, regardless, nothing I say or do will have any effect on my job at Shawnee. I understand that if I do not give any information or give any information to the company and anything comes of it through the union or otherwise that the company will protect me and my job.

Before the election one evening while I was at home because my hands were red and I had an allergy to acetone I was visited by Gene Puckett from the U. A. W. and a girl that works at the plant. They talked to me for quite awhile about signing a union card and I told them I didn't want to sign a card. Puckett told me at that time that there would not be any initiation fee if I signed the cards and went along with the union. Linda Lawson told me about a threat she had received at work about this time about it being tough on her if she did not sign a card. After the election I have been told by the union people I would have to pay an initiation fee of $50.00 or even as high as $100.00. This was a short while ago, or after February 6, 1971. I believe the deadline for the initiation fee was February 15, 1971. I should add that Linda told me they included my name when they talked to her about what would happen to us when the union came in.

I have read the foregoing statement and it is true to the best of my knowledge and belief, March 9, 1971.

/s/ Betty M. Guess

[3d]

Law Offices
KAHN, DEES, DONOVAN & KAHN
305 Union Federal Building
Evansville, Indiana 47708

March 8, 1971

Mr. D Patton Pelfrey
Field Attorney
National Labor Relations Board, Region 9
2407 Federal Office Building
550 Main Street
Cincinnati, Ohio 45202

Re: Shawnee Plastics, Inc.
Case No 9-RC-8823

Dear Mr. Pelfrey.

Enclosed please find another statement with reference to the above matter from Eugene Denney I hope to have additional material for you by the end of the week

Very truly yours,

KAHN, DEES, DONOVAN & KAHN

JAY ET

bcc to Messrs Claybourn, Kizer, Lester

P.O. Box 485
Eddyville, Kentucky
March 3, 1971

Shawnee Plastics, Inc.
Mr. LeRoy Kizer, Pres.
Lakeshore Drive
Kuttawa, Kentucky

Dear Mr. Kizer:

On February 24, 1971, I had a conversation that could be of interest to you with Mr. Bernie Ware, owner of Twin Tiki Restaurant in Eddyville. Mr. Ware said he had heard that during the organization of your employees, someone agreed to pay $1000 if they were successful in their efforts to organize a union. Mr. Ware indicated that ten people were to share this amount equally. He also said he understood that before the election was over another person had been included in this group, making a total of 11 people, each receiving $100.

Yours truly,

/s/ Eugene Denney

bd

Law Offices
KAHN, DEES, DONOVAN & KAHN
305 Union Federal Building
Evansville, Indiana 47708

March 6, 1971

Mr. D. Patton Pelfrey
Field Attorney
National Labor Relations Board, Region 9
2407 Federal Office Building
550 Main Street
Cincinnati, Ohio 45202

Re: Shawnee Plastics, Inc.
Case No. 9-RC-8823

Dear Mr. Pelfrey:

Enclosed please find an informal statement on the part of Ralph E. Zimmerman, Jr. with reference to payments made to the employees of Shawnee Plastics by the United Auto Workers.

Although I do not want to tell you how to do your job, it would seem to me that in light of the difficulty of obtaining evidence in this matter you might want to just ask the Auto Workers if the $100.00 payments were made and to whom. It would seem in this manner that a lot of useless activity could be avoided in this case and a second election held. If this is not possible, proof of payment could only be had through a hearing, since then, of course, we could subena the appropriate official of the United Auto Workers Union who would have custody of any records of payment. As you well know, we face the risk of 8(a)(1) when we deal with employees direct, and it might be that my suggestion in the preceding is at least worth considering. On prior occasions I have found that this direct approach has proved quite fruitful.

Very truly yours,

KAHN, DEES, DONOVAN & KAHN

JAY:ET
bcc to Messrs. Claybourn, Lester, Kizer

RALPH E. ZIMMERMANN & SONS
Manufacturers Representatives
1034 Fisher Building
Detroit, Michigan 48202

February 25, 1971

Mr. LeRoy Kizer, President
Shawnee Plastics, Inc.
P.O. Box 278
Kuttawa, Kentucky 42055

Dear LeRoy:

This is to confirm our several conversations with you concerning my brother, Bob Zimmermann and my visit to Kuttawa on January 21 and 22, 1971.

While staying at the Twin Tiki Motel, at Eddyville, Kentucky; and when eating at the adjacent restaurant run by Bernie Ware, we had two separate conversations with Mr. Ware (one the evening of January 21 and the other the morning of January 22) during which he told us it was a well known fact that some Shawnee employees were paid $100.00 each to help organize and establish the UAW in our recent election.

Mr. Ware further stated that the number so employed by the UAW for this task numbered 9 men and 2 women each receiving $100.00. He added that one woman quit the day after she received her $100.00.

His statements were witnessed by a waitress and fully agreed with by her.

These conversations were heard by my brother, Bob Zimmermann; my Father, Ralph E. Zimmermann; and, Loren F. Weiss, of Cleveland, Ohio.

Very truly yours,

/s/ Ralph E. Zimmermann, Jr.

REZjr:je

[5a]

Law Offices
KAHN, DEES, DONOVAN & KAHN
305 Union Federal Building
Evansville, Indiana 47708

March 3, 1971

Mr. D. Patton Pelfrey
Field Attorney
National Labor Relations Board, Region 9
2407 Federal Office Building
550 Main Street
Cincinnati, Ohio 45202

Re: Shawnee Plastics, Inc.
Case No. 9-RC-8823

Dear Mr. Pelfrey:

This is to confirm our telephone conversation of this date with reference to the submission of evidence in the above case. I would also like to take this opportunity to advise you that we will also submit a statement of position on this matter.

Please find enclosed a form of affidavit obtained by our client with reference to the $100.00 payments involved in the instant case. However, be advised that on Tuesday, March 9th, I plan to visit the company plant premises, weather permitting, for the purpose of taking statements from any witnesses who may be available. Hopefully, I will be able to obtain more information, although I might point out that our objections raise substantial material issues with reference to several of the Union campaign materials issued during the course of the election, which I believe have already been submitted to your offices. Please note that I am referring to the Exhibits A through J annexed to the affidavit of James F. Claybourn.

You can expect to hear from us in a short time after our visit to the plant premises next Tuesday. However, as I have advised you several times, it seems the employees of the company are extremely reluctant to talk about this matter, and some of our information, as I have stated before, has been received through what might best be called either surreptitious or clandestine telephone calls from employees who have refused to

divulge their names because of fear. What I am trying to say is that without the subpena power, we are at a great disadvantage in being able to obtain statements.

We will be in touch with you further in this matter.

Very truly yours,

KAHN, DEES, DONOVAN & KAHN

JAY:ET

Copy to Company

Copies to
Mr. James P. Claybourn
Mr. Gene Lester
Mr. LeRoy Kizer

PRESSURE CASTINGS, INC.
Aluminum and Zinc Die Castings
21500 St. Clair Avenue
Cleveland, Ohio 44119

February 23, 1971

Mr. Jim Claybourne
Box 296
Kuttawa, Kentucky 42055

Dear Jim:

This will confirm the information which I gave to you verbally on 1/22/71.

I told you that on the previous evening [1/21/71] I had eaten dinner at the Twin Tiki Restaurant in Eddyville with Messrs. Ralph, Sr., Ralph, Jr. and Bob Zimmermann. We had a conversation with the Proprietor, Mr. Bernie Ware, in which he related to us that it was a well-known fact locally, that at least nine Employees of Shawnee Plastics had received a One Hundred Dollar payment for their efforts in helping the UAW to win the NLRB Election the previous week. This conversation also involved the Waitress who works during the day as an Employee at Arvin in Princeton, Ky. She verified that she was aware of the same information and stated that two of the Employees received their $100.00 payment and quit the day after the election.

If I can be of further service, I will be glad to cooperate.

Sincerely yours,
PRESSURE CASTINGS, INC.

/s/ Loren F. Weiss
President & General Manager

LFW:E

Sworn to and subscribed before me this 23 day of 1971.

/s/ Peter Weintz, Jr
Notary Public
My Commission Expires 5/21/72

[6a]

STATE OF INDIANA)
) SS:
VANDERBURGH COUNTY)

James F. Claybourn, being duly sworn upon his oath, deposes and says as follows:

1. That he is Industrial Relations Manager of Shawnee Plastics, Inc., located in Kuttawa, Kentucky. That he makes this affidavit in support of the company's objections to the conduct of the election and conduct affecting results of the election held at company premises on January 14, 1971 in a case known on the records of the National Labor Relations Board as Case No. 9-RC-8823. That attached hereto as exhibits A through I are a series of handbills and leaflets circulated by the unions both at company plant premises and by mail to the homes of employees of the company, which are supplied in support of the company's objections contained in paragraph 2 thereof and all subparts, filed with the National Labor Relations Board.

a. Exhibit A annexed to this affidavit makes a false statement with reference to the number of employees required to authorize a strike by the UAW, in that the handbill does not make it clear that the two-thirds majority required is two-thirds of the employees present at a meeting, not two-thirds of the employees of a given employer.

b. Exhibit B annexed hereto is an IAM mailing indicating that this company would close were a union to be chosen as a representative of its employees.

c. Exhibits C and D are handbills and mailings indicating that the employees of this company had only the right to engage in union activity, and therefore contained misstatements of the law in the sense that Section 7 of the National Labor

Relations Act specifically provides that employees have the right not to engage in union activity.

d. Attached hereto as Exhibits E, F and G are documents indicating the nature of false statements made by the UAW concerning their dues structure. Exhibit E, being taken from the December, 1970 issue of the official union newspaper, indicates that our employees would be required to pay monthly dues amounting to four times their hourly rate, while Exhibits F and G show that during the election campaign the union indicated that the dues rate would only be two hours pay per month. In the same manner, Exhibit G makes false statements with reference to the obligation of our employees to pay union dues, since it has been reported to us from employees, whose names will be supplied upon request, that the UAW has been coercing them into signing dues checkoff authorizations, contrary to the statements in the handbill. Similarly, we have been advised that employees have been threatened with reference to payment of initiation fees, which once again Exhibit G indicates were waived for purposes of the election.

e. Exhibit H annexed hereto indicates that the UAW falsely informed the employees of the company that the company had knowledge of who had signed UAW cards, and therefore misrepresented to the employees that the company had violated the National Labor Relations Act.

f. Attached hereto as Exhibits I and J are handbills from the UAW and the IAM respectively, indicating that were the employees of the company to select either of them as their bargaining agent, automatic improvements in all aspects of their wages and other conditions of employment would automatically result, which once again is a misstatement of the law in the sense

that all a union gains as a result of a Board-sponsored election is the right to bargain collectively, and whatever is bargained for is what binds the employer, the point being that improvements are not automatic but result from the process of collective bargaining

2 We have obtained information indirectly which we think requires some inquiry by the Board of the representatives of the United Auto Workers who were involved in our organizational campaign. We were advised by three men who are associated with the company indirectly as manufacturers' representatives, Ralph Zimmerman, Sr., Ralph Zimmerman, Jr. and Robert Zimmerman that on the evening of Thursday, January 21, 1971 they were eating their evening meal at the Twin Tiki restaurant in Eddyville, Kentucky, at which time they were informed by Mr. Bernie Ware, who operates the restaurant, that he had been advised that the UAW had made payments of $100.00 apiece to eleven employees of the company as a means of furthering the UAW election campaign among the employees, and that this was done prior to the date of the election. We are making arrangements to obtain statements from the Zimmermans, which we are sure we can obtain, although their schedules are such that it may take some time, particularly since they work out of Detroit, Michigan. Also, of course, we would like to get a statement from Bernie Ware as to these matters, but this may be difficult to obtain because of his position in the local community. However, we are sure that if the Board Agent would discuss the matter with him he would be in a much better position to obtain the facts than would be the case with us. I am also advised that at the time the preceding information was obtained there was a waitress who is an employee of Mr. Ware, one Josephine Pierce

Vowell, who stated that she was advised that one of the themes of the UAW campaign was that the IAM and the company were working together. I take this opportunity to state that this is not true and that no arrangement of any kind was made between this company and the IAM concerning this election.

3. On the morning of the election of January 14, 1971 the UAW made use of what I would call the bandwagon technique, in that as our employees entered the plant premises several persons, many of whom were not employees of the company, were in such a position so as to make it impossible for employees of the company to come into the plant without stopping and therefore several employees of the company were forced to either accept union insignia or other items or not come to work. In other words, we believe that if the Board Agent were to discuss this matter in private with any employee of the company you would learn this is the case -- employees were coerced on the morning of the election, by the UAW.

4. Further, on the morning of the election two additional things happened, which I believe should be brought to the Board's attention. The first involved an incident which I believe occurred either at the time the polls opened at 7:00 o'clock or shortly thereafter, involving David Loveless, who is the department manager in the Molding department. It is my understanding that a Donald Brantley at the time walked to the door of the polling area in an attempt to induce the Board Agent inside to leave the polling area to investigate a complaint. It is my opinion that this was an attempt on the part of Brantley to coerce another employee of the company, Kenneth Asbridge, with reference to his exercising his right to vote, in that he was trying to void Asbridge's vote without any reason other than the implication

that Asbridge should not be allowed to vote because prior to the time the polls opened Loveless asked Asbridge to vote neither, and Brantley attempted to make an issue of this fact at the time set out above.

The second issue involves the UAW observer, Janice Knight, and Jeanie Sexton, the company observer. It has been reported to me that Knight interfered with Sexton when she was asked by Davis Loveless if an employee who had not shown up for work was in the polling area, and it has been reported to me that Knight's statement to Sexton was, "If you talk to any more supervisors I will report you to the NLRB Agent." Because this was said in a work area and occurred while the polls were open it would seem that, to the employees in the area at least, this was an attempt to place the company in the position of engaging in unlawful conduct, and therefore amounted to campaigning while the polls were open.

Further affiant sayeth not.

/s/ James F. Claybourn

Subscribed and sworn to before me, a notary public in and for said county and state, this 27 day of January, 1971.

/s/ Evelyn Tilcamp
Notary Public

My commission expires:
1/14/74

1/11/71

Read the Truth About . . .

STRIKES

The frequency of strikes is exaggerated! The UAW peacefully negotiates thousands of contracts through normal routine collective bargaining procedures, that never get mentioned in the newspapers. But when management forces workers to take strike action, it makes the front page of all newspapers. Workers DO NOT like to strike. The UAW, being a workers' organization, DOES NOT like strikes either!

When a strike does occur, it is because stubborn management does not accept the facts before it -- and insists on denying its workers their justified demands! It occurs only as a last resort when the workers of the particular plant involved have exhausted every other means of obtaining decent wages and satisfactory working conditions and when they are convinced that an unfair management has no intention of fulfilling their just needs.

In the UAW, only the workers involved have the right to -- or can -- call a strike! To do so, they have to follow democratic procedures which are fully spelled out in the UAW Constitution and By-Laws.

NEITHER THE UAW INTERNATIONAL UNION, NOR ANY OF ITS OFFICERS, CAN CALL A STRIKE OR TELL THE WORKERS OF ANY PLANT TO GO ON STRIKE!

IT BEARS REPEATING . . . only the workers of the plant concerned can do that! They do so only after they are convinced that their employer is unjust and refuses to resolve the problems at the bargaining table.

When the patience of the workers is exhausted and there is no hope of conciliatory action from management, the workers have a membership meeting to consider the entire situation.

After due deliberation and consideration of the facts, they might decide by majority vote that the only thing that will make the company move is strike action. However, they cannot call a strike. On an important question like that, every member is given a chance to help make the final decision. So, they set a date to vote on the matter. A committee is elected to conduct the election and it is publicized by notices and handbills. The time and place of the election must be publicized a minimum of seven days in advance.

A "YES" and "NO" ballot is prepared and secret ballot voting takes place in conveniently located booths.

A majority vote is NOT ENOUGH to authorize a strike -- it requires a TWO-THIRDS majority! Even after two-thirds of the workers have decided they want to strike, the Regional Director having jurisdiction must get strike authorization from the International Executive Board before a strike can begin!

This is a safety measure to be sure that everything has been done to achieve the objective of the workers without a strike.

After these procedures have been followed, and the workers feel that strike action is necessary, then the UAW will support you in a strike. The full economic strength of the Union will be behind you. Just remember, if there is a strike at your plant, you -- the worker in the plant will make that decision. Once you make the decision, the International Union will support you.

Thomas Puckett
INTERNATIONAL REPRESENTATIVE, UAW

1-11-71

2 @

It's A Fact

12-18-70

Struck Plant Will Close Down

Cynthia, [illegible]

Former Company - Cynthiana plant will close from operations.

[illegible] employees have been on [illegible] since [illegible], leaving only a skeleton production force on the [illegible].

[illegible] President of local 189 [illegible] "If the [illegible] could not meet at least some of the [illegible] demands or whether [illegible] it [illegible] it is well for the [illegible] to [illegible].

[illegible] President [illegible] "The union was approached by Cynthiana [illegible] and negotiations began [illegible] plant [illegible]."

[illegible] [illegible] [illegible] [

INTERNATIONAL ASSOCIATION OF
MACHINISTS & AEROSPACE WORKERS
DISTRICT LODGE # 154
P. O. Box 408
Calvert City, Kentucky 42029

November 11, 1970

To: All Employees of the Shawnee Plastics Company,
Kuttawa, Kentucky

Dear Friends:

It comes as no surpirse to the Machinists Union, or the employees of Shawnee Plastics that the Company will take every step to see to it that no union comes to Shawnee Plastics.

The law says under section 7 of the National Labor Relations Act as amended in part as follows: "Employees shall have the right to self-organization to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection."

Doesn't this sound as though the company has taken the position they will go to any length to deprive you of a right guaranteed by law?

The Machinists union (I. A. M.) has not promised to "give" you a raise, "give" you more benefits or "give" you this or that. The truth is the representatives of the Machinists union have promised to "give" you fair and honest representation. This we can and will do. We can help you to gain shift preference by seniority such as the employees at Evansville had in their contract. We can help you to gain time and one half for Saturday as such and double time for Sunday as such. This was a contractual obligation of the company under the Evansville contract. What would this mean to you? It would simply mean the company could not lay you off on Thursday and Friday and work you Saturday and Sunday for straight time.

There are many other benefits the I. A. M. negotiated with the Shawnee Plastics Company for the employees in Evansville

that you do not enjoy. Now, is it fair to assume that the I. A. M. helped the employees in Evansville to gain these benefits or did the company just think more of their employees in Evansville than they do of their employees in Kuttawa?

It is further interesting to note how the company invites you to discuss your interest in the union with your foreman or any member in management. After the company telling you and demonstrating to you, they will do everything possible to keep you from exercising your rights under the law, don't you feel their answers and comments might be a little biased and misleading? I would suggest if you have questions about the I. A. M. you contact the representatives or other members of the I. A. M. who are working under a I. A. M. contract.

It has been brought to our attention that some of the merchants and business people of Kuttawa and Eddyville are also meddling in your business as to whether you need and want a union or not. These people (business man and merchants) do not have to nor would they work under the conditions (such as lack of job security and wages) that you must work under or leave. These same people very much covet and solicit the money earned by union members under union contracts. If all the money earned under union contracts by union members were taken out of Kuttawa and Eddyville they would be very flat, sour little towns. "Ask the merchants of Mayfield, Kentucky."

We have been asked the question, "If the National Labor Relations Board conducts an election at Shawnee Plastics will it be a secret ballot? Yes, a member of the board (NLRB) will conduct the election. He will give a ballot to each person, one at a time, who is eligible to vote and chooses to vote, that person will go to a closed voting booth and mark their ballot and deposit it in the ballot box, no one but you will know how you voted. One other thing on a Board election. If the NLRB (which is a federal agency) holds an election and any union does not get at least 50% plus one vote the union loses and the board will not conduct another election in that plant for at least twelve (12) months.

Once again we would urge all who have not already done so to fill out and sign the authorization card we gave you October 29 and return it to our office in the postage free envelope provided. If you need more cards contact either representative, or our office.

Sincerely yours,

/s/ O.K. Patton, Jr.	/s/ J.R. Gray	/s/ Olan R. Long
Business Rep.	Directing Bus. Rep.	Grand Lodge Rep.

INTERNATIONAL ASSOCIATION OF
MACHINISTS & AEROSPACE WORKERS
BOX 408
CALVERT CITY, KENTUCKY 42029

October 29, 1970

TO: ALL EMPLOYEES OF THE SHAWNEE PLASTICS COMPANY, KUTTAWA, KENTUCKY

Dear Friends:

We would like to take this opportunity to inform you that the person handing you this letter is a member of the I. A. M. The I. A. M. is one of the largest unions within the A. F. L. -- C. I. O., and holds more collective bargaining agreements with more companies than any other International Union.

Today more than one million members of the I. A. M. welcome you to join them in order that you too may enjoy the many benefits of Union Membership.

Just a few of the many benefits of Union Membership are: Higher Wages; Paid Holidays and Vacations; Job Security; Hospitalization Insurance and Pension Benefits.

All of these benefits and many more can be, and are, won through Union Membership and collective bargaining.

The Union wants to help you. We have inserted an authorization card in the attached envelope. Fill it out, sign it, and mail it back in the pre-addressed envelope (no postage required) and drop it in any mail box.

No member of management will know if you sign a card. Your card is kept confidential by the Union.

The United States Government guarantees your right to form, join and participate in a labor union.

We will be glad to answer any questions that you might have regarding the Union.

[D]

Address all inquiries to: J. R. Gray, Directing Business Representative
International Association of Machinists & Aerospace Workers
Box 408
Calvert City, Kentucky 42029

Don't hesitate, mail your card back today.

Sincerely yours,

/s/ O.K. Patton, Jr. /s/ J.R. Gray /s/ O.R. Long

P/L/G/y

NEW DUE FACTS IN A NUTSHELL

- Effective for November.
- To avoid penalties, monthly dues must be paid during the month they are due.
- Time limit: until strike fund reaches $10 million, free and clear of debt.
- UAW members in the auto, agricultural implement and other sections of the union who have COLA retroactivity coming will pay $20 a month in addition to the regular two hours' dues.
- A month after the GM strike ends, these members' dues will decrease to the equivalent of four hours' pay per month.
- Other members' dues rise from the regular two-hours' pay equivalent to four hours.

[E]

THAT MESSAGE FROM THE BOSS . . .

If you haven't already received a special message from the boss, you'll probably get one pretty soon. Suddenly, you'll find that the boss is very concerned about your welfare -- because the union's here. He'll try to tell you he wants you to vote against the union for your good, that his motives are unselfish. His concern is so-o-o touching! Here's what he'll tell you . . .

• The union can't do anything for you . . .

If the union can't do anything for you, why is the boss trying to keep it out? The boss knows the UAW union means higher wages, better conditions, a say for you on the job and a written contract. That's why he wants you to vote against the union.

• All the union wants is your dues money . . .

Yes, the UAW charges nominal dues. Two hours pay per month. But why is the boss worried about your dues? He knows that higher UAW union wages will repay your dues many times over. That's why! It stands to reason that no organization can represent you without finances. You pay to support your schools and your church. Why not your union?

• The union will force you to go on strike . . .

Nobody can force you to go on strike. There will never be a strike here in your UAW union unless you vote for it. Over 150,000 contracts between unions and employers were signed last year without strikes. There were fewer strikes than at any time since World War II. If the boss will bargain in good faith there will never be a strike in your shop. All the union wants is a fair deal for you.

• The union will be run by outsiders .

You will vote for your own rules and run your affairs within your UAW union. The UAW constitution guarantees you a vote and representation. The boss hires expert lawyers to represent him. They are just as much outsiders as the skilled UAW union representatives who will help you to win better wages and conditions. The union gives you the strength you need to negotiate with the boss on fair terms. That's what the boss fears!

* The boss's door is always open to any employee who has a complaint . . .

Yes, indeed, and the boss means the front door going out. Anybody who doesn't like it without the union is always free to quit and be unemployed. That's what the boss really means. You've had years here without the union and you have learned your complaints are handled or ignored according to your boss's wishes. The union means that the boss has to negotiate on your grievances and complaints. That's why the boss doesn't want the union!

* The union will stir up hard feelings . . .

Approximately a million and a half UAW union members are the best paid industrial workers with the greatest benefits in the labor force. There is less ill-will in the union plants than elsewhere because conditions are better. Thousands of employers accept the union and negotiate with it. Only unfair employers have a hard time with the union. A good shop with good working conditions is good for everybody. Happy employees fairly treated produce more.

* If the union comes in, the shop will be closed down . . .

That's supposed to be the blockbuster. The boss will claim he can't compete if he pays higher wages. But thousands of organized plants are competing successfully right now. The boss knows darned well that he'll stay here because he has invested big money in this shop. He's trying to scare you. He's saying that you will always have to accept the wages he offers and substandard working conditions. The union says things can be better! Through your UAW affiliation you will make things better.

The Law Says That You Have a Right to Union
REPRESENTATION!
The Law Says That You Have the Right to
A UNION CONTRACT!
The Law Says The Boss Can't Hurt You for
JOINING THE UNION!
TAKE ADVANTAGE OF YOUR RIGHTS . . .
. . . SIGN YOUR UAW CARD TODAY

United Automobile Workers, Aerospace and Agricultural Implement Workers of America

(UAW)

1/8/71

Dear Shawnee Plastic Employees:

In the past few weeks the "Other" union and the Shawnee Plastic Company have been putting out a lot of propaganda about UAW dues.

YES . . . the UAW local union's delegates to the great UAW Convention voted a special dues program to help their brothers and sisters, fellow UAW members, who were having problems with the powerful General Motors Corporation. This action resulted in the winning of its best contract for them that is unmatched by another union in the world. This proves that "IN UNITY THERE IS STRENGTH."

The UAW members in the Calvert City area acted in the same manner some time ago when they GAVE Financial Help to the MEMBERS of this "other" union in Calvert City when they were on strike for a contract . . . However, it seems the "other" union has forgotten the UAW union's brotherly deed!

FACTS ABOUT THE UAW DUES STRUCTURE

QUESTION: How much are the monthly dues in the UAW?

ANSWER: A minimum of $5.00 per month or two hours pay, excluding shift premium and overtime pay.

QUESTION: How is this money distributed?

ANSWER: 40% stays in the local union treasury, 30% goes into the UAW Strike Insurance Fund, 30% goes into the UAW General Fund to provide the many vital services to the local unions such as research, latest information on collective bargaining, legal assistance, etc.

[G]

QUESTION: When will the Shawnee Plastic workers begin paying UAW dues?

ANSWER: Shawnee Plastic workers will not pay any union dues until after a contract has been negotiated for them and has been accepted by them! You will have increased wages and more benefits and it won't have to cost you a cent in UAW dues.

QUESTION: Will Shawnee Plastic workers have to pay an initiation fee?

ANSWER: NO . . . Any worker in the plant at the time of the election will be exempt from an initiation fee!

QUESTION: Are union dues deductable?

ANSWER: Yes, they are deductable on both federal and state income taxes.

QUESTION: Will the Shawnee Plastic workers elect their own officers?

ANSWER: Absolutely! . . . You will hold meetings to nominate and then elect your Executive Officers and Board Members including . . . President -- Vice President -- Recording Secretary -- Financial Secretary -- 3 Trustees -- Guide and Sgt.-at-Arms.

QUESTION: Why do UAW members say "It doesn't cost to belon to UAW . . . It Pays?"

ANSWER: Because a UAW contract will provide better wages and fringe benefits, job security, improved working conditions, more paid holidays, longer vacations with pay, better insurance coverage and safer working conditions PLUS many other types of benefits.

BE WISE . . . REALIZE . . . ORGANIZE

Vote UAW Thursday, January 14, 1971

UAW -- 1st in Labor -- 1st on the Ballot

1st for Shawnee Plastic Workers!

X	VOTE UAW		

The UAW challenges Shawnee Plastic Company to post this hand-bill on the plant bulletin board as they did the handbill of the "other" union!

Gene Puckett
President,
UAW Local 523
Calvert City, Ky.

Thomas Puckett
International Rep.
UAW
Bowling Green, Ky.

12-30-70

TO ALL SHAWNEE PLASTICS EMPLOYEES

In the past few weeks of your organizational drive you have been hearing the management people of Shawnee Plastics saying to you -- "You should not vote for that ole union" -- as if they were trying to tell you that the union would be bad for you.

We want to say to you that the union is the only hope for you as a worker.

The union is not bad because the union can and will be you.

The union is a group of people united together for a common cause.

The union is the man or woman next door to you or around the corner from you, who goes to the Baptist Church, the Methodist, Church, the Presbyterian Church, the Church of Christ, the Holiness Church, the Catholic Church, or some other church in your community.

The union is the boy scout leader or the girl scout leader. He is the member of the Lions' Club, the Kiwanis Club or some other civic organization of which you are a part. She is the member of the Woman's Club, the PTA, or the Homemakers' Club.

What are we saying? The union is made up of people just like you. The union is all about people, working people.

Why does management tell you that the union is bad for you? Why do they tell you not to vote for the UAW?

1. They would like to continue to work each of you for those low wages that you are receiving now.

2. They do not want to negotiate with you on your wages, insurance benefits, vacations, seniority rights, health and safety, pensions, shift premiums, shift preference, reporting pay, hours of work, working conditions, or any of these things that are so important to the working man.

3. They know that a majority of you have signed UAW cards and now they want to divide you in your efforts.

REMEMBER, ON JANUARY 14th, VOTE FOR UAW AND BE UNITED FOR A COMMON CAUSE.

Gene Puckett, President
UAW, Local 523
Calvert City, Kentucky

Thomas Puckett
UAW Staff Representative
Region No. 3
Bowling Green, Kentucky

A Question . . . STRAIGHT FROM THE SHOULDER

WHAT IS BEST FOR YOU?

UAW

International Union
United Automobile, Aerospace & Agricultural
Implement Workers of America

Dear Friend:

The question above is really the only important issue in this whole campaign. Your vote on January 14th will have a major effect on you and your family, because the election results will influence your future wages, your hospital/medical - insurance program, your opportunity to seek and obtain a promotion, your right to complain against unfair treatment without fear, as well as the security that comes with UAW Union Contract protection of your seniority.

Your decision on how you will vote is not an easy one. There are more people to be considered than just you alone. How well you do in your job and what the returns are for your labor shows up in your ability to provide for your family, and the level at which you can maintain your standard of living. All of us want to keep improving our lot. With living conditions as tough as they are today, with the inflated buck buying less and less month after month, the question of "WHAT IS BEST FOR YOU" becomes a very serious one at this time of the election. It requires considerable thought and judgment.

Through the materials given you, at the meetings or at the plant gate, we have shown you what can be accomplished through UAW Union Representation. We have distributed copies of UAW contracts covering several thousand Kentucky workers, showing that our members get the highest pay and the finest benefits of any industrial workers in the United States. No one can argue with these facts.

Representation means nothing unless you have Real Bargaining Power. You get this only through the strength of a Union such as the UAW, which has demonstrated beyond question that it can produce. REAL BARGAINING POWER is the means by which you can

RAISE YOUR WAGES
GUARANTEE TOP RATES OF PAY WITHIN A SPECIFIED PERIOD OF TIME
GET JOB SECURITY THROUGH SENIORITY PROTECTION
OBTAIN SUPPLEMENTAL UNEMPLOYMENT BENEFITS (LAYOFF PAY)
INITIATE COST-OF-LIVING ALLOWANCES
SECURE GUARANTEED RECALL RIGHTS IF A LAYOFF SHOULD OCCUR
HAVE AN HONEST GRIEVANCE PROCEDURE WITH ARBITRATION
IMPROVE HOSPITAL AND MEDICAL INSURANCE COVERAGE
ASSURE FAIR TREATMENT ON PROMOTIONAL OPPORTUNITIES

These things are not "pie in the sky" ideas. Through REAL BARGAINING POWER the UAW has been able to get these, and much more, for the workers throughout this country. As a Shawnee worker in Kentucky you are "as good as the next person" and entitled to the same first-class citizenship treatment.

We in the UAW know that "What is Best For YOU" is the UAW. We hope you will agree, and cast your vote for UAW Union Representation on election day.

Sincerely and Fraternally,

Thomas Puckett
International Representative UAW

and

Gene Puckett, Pres.
Local 523, UAW

TO: EMPLOYEES OF SHAWNEE PLASTICS

When an employee belongs to a Union and pay dues, he or she wants the best in wages and conditions.

In the IAM you will have your own Charter. You will elect your own officers, committee and stewards.

Most of IAM Contracts contain the following provisions:

1. Top Wages
2. Meal Allowances
3. Holidays with Pay
4. Insurance for Employees and Dependents
5. Pensions with vesting privileges
6. Shift Pay
7. Time and One Half after 8 and after 40 hours work
8. Time and One Half for Saturday
9. Double Time for Sunday
10. Triple Time for work on holiday
11. Sick Leave Pay
12. Jury Duty Pay
13. Seniority Rights
14. Proper Job Promotion
15. Equal Pay for Women
16. Grievance Procedure, including arbitration, plus many other IAM benefits

You can have an IAM contract with your company by voting for IAM-AFL-CIO on election day.

Don't let the Company or the U.A.W. sell you short on the wages and benefits that are long overdue.

Get all of the Facts and Truth --
For Greater Progress -- Vote I.A.M. -A.F.L. -C.I.O.

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STATE OF INDIANA)
) SS:
VANDERBURGH COUNTY)

Gene V. Lester, being duly sworn upon his oath, deposes and says as follows:

1. That he is plant manager of Shawnee Plastics, Inc. of Kuttawa, Kentucky, and that he makes this affidavit in support of the company's objections to the conduct of the election and conduct affecting results of the election held on the company premises on January 14, 1971, in a case known on the records of the National Labor Relations Board as Case No. 9-RC-8823.

2. That he is familiar with the statements contained in the affidavit of James F. Claybourn and would affirmatively state that if he were to make an affidavit concerning those matters, his statements would be substantially similar to those made in Mr. Claybourn's affidavit.

3. Affiant would like the Board to know that the company's major concern in this matter is protecting our employees, who seem to be extremely frightened about what went on during the election campaign in the sense that the unions seemed to have created such an atmosphere of coercion and fear that even to this date employees are frightened. Among my experiences are the following:

a. On the Sunday before the election was held on the following Thursday, I received numerous phone calls from employees of the company who were so frightened they refused to give their names. If I was going to report the gist of these conversations I would have to say that I was advised that these employees were told by the UAW that it would know how individual employees would vote in the election and if the specific employee

did not wear union buttons and vote for the UAW in the election, once the union got in (and this was a certainty) such employees would be fired and would lose their jobs.

b. I have been advised by other supervisory employees of the company that they have been told by employees that they, the employees, might even be killed if they were to say anything about what happened during the election campaign. Also, with reference to one employee of the company after the pre-election conference on the day before the election, I was advised by an employee of the company that she was afraid to vote. She told me the reason she was afraid to vote was that if she did not vote for the UAW she would be fired. No matter what I did to try to encourage her, it seemed to me she was still frightened. I will also state that I will supply the names of the employees involved in this conversation upon request from the Board.

Further affiant sayeth not.

/s/ Gene V. Lester

Subscribed and sworn to before me, a notary public in and for said county and state, this 27 day of January, 1971.

/s/ Evelyn Tilcamp
Notary Public

My commission expires.
1-14-74

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1865

SHAWNEE PLASTICS, INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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1. On January 14, 1971, a Board-conducted representation election was held among the production and maintenance employees at the Company's plastics plant in Kuttawa, Kentucky. It resulted in 122 votes for the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (hereafter "the Union"); 3 votes for the Intervenor;[1] 67 votes against either union; and 3 challenged ballots (Pet. App. B, 39, 45-46).

The Company filed timely objections to the election, alleging that certain employees in the unit had been threatened and interrogated by agents and representatives of the Union and of the Intervenor

[1]International Association of Machinists and Aerospace Workers, AFL-CIO.

prior to and during the election (Pet. App. B, 40-41); that the Union had made material misrepresentations of facts prior to the election (Pet. App. B, 41-42); that the Union had made false statements respecting the Union's dues and fees and had impermissibly offered to waive initiation fees in order to obtain employee support (Pet. App. B, 42); and that it had paid employees to assist in the pre-election campaign (Pet. App. B, 66-68). The Regional Director of the National Labor Relations Board conducted an administrative investigation of the Company's objections, affording the parties full opportunity to submit pertinent evidence. The Company submitted affidavits, letters, and handbills allegedly establishing the objectionable conduct (Pet. App. B, 82-132).

The Regional Director issued a report (Pet. App. B, 4569) recommending that the Company's objections be overruled:

(a) He found that, with one exception, the alleged threats were based on hearsay or other unreliable evidence and could not be attributed to the Union or its agents (Pet. App. B, 51). He further found that the threat supported by evidence, even if made by a union agent, did not warrant setting aside the election because it was "isolated" and "ambiguous" (Pet. App. B, 51-52).[2]

(b) The Director also found that the Union had not misrepresented the amount of its dues (Pet. App. B, 57-61); that the Company submitted no evidence supporting its charge that the Union had threatened that the plant

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[2]A person described as "Big Puckett" allegedly told one employee, "you'd better remember us, little fella [sic] or we're going to remember you" (Pet. App. B, 52).

would close should the Union lose the election (Pet. App. B, 54-55); that there was no evidence to support the allegation that the Union paid employees to campaign for it (Pet. App. B, 67-68); that the Union had no duty to advise employees of their right to refrain from union activity (Pet. App. B, 55-57); and that the Union's leaflets concerning the expected advantages of unionization were legitimate campaign propaganda (Pet. App. B, 63-65).

(c) Finally, the Director found that the Union had explained to employees that there would be no initiation fees for anyone who applied for membership prior to the execution of a collective bargaining agreement with the Company, but that employees seeking to join the Union after an agreement was signed would have to pay the standard initiation fee (Pet. App. B, 60). He concluded that such a waiver was not unlawful (Pet. App. B, 61).

The Board overruled the Company's exceptions to the Regional Director's report, and certified the Union (Pet. App. B, 77-81). The Company then refused to bargain with the Union and the Board found the Company's refusal violated Section 8(a)(5) and (1) of the National Labor Relations Act, and issued a bargaining order (Pet. App. B, 17-29).

2. The court of appeals sustained the Board's findings and conclusions, and enforced its order (Pet. App. A, 2-5). The court held that "the statements [relied on by petitioner in its objections] are ambiguous, based on hearsay and self-serving declarations. They do not, in our judgment, allege facts which if proven would be cause for setting aside the election. Consequently, we conclude that the Board did not abuse its discretion

and that the order should be enforced" (Pet. App. A, 5).The court further held that the waiver of initiation fees here was distinguishable from that involved in *National Labor Relations Board v. Savair Mfg. Co.*, 414 U.S. 270, and did not interfere with employee free choice in the election (Pet. App. A, 5, note).

3. Petitioner asserts (Pet. 2), that the court of appeals, contrary to Section 10(e) of the National Labor Relations Act, 29 U.S.C. 160(e), "reviewed the record in the instant case by application of an 'arbitrary and capricious' standard." The court did state that the Board was not "arbitrary and capricious" in denying petitioner an evidentiary hearing on its objections. But it stated this only after ruling that the evidence on which petitioner relied was lacking in probative value. The court concluded correctly that the Board "did not abuse its discretion" in declining to hold a hearing when the facts alleged, if proven, would not be cause for setting aside the election (Pet. App. A, 5).

4. Petitioner contends (Pet. 12-14) that the Union's waiver of initiation fees was improper under this Court's decision in *Savair, supra.* In *Savair,* the Court held that a union's waiver of initiation fees for employees who signed authorization cards prior to an election was impermissible because it allows "the union to buy endorsements and paint a false portrait of employee support during its election campaign." 414 U.S. at 277. Since here the waiver was open not only before the election but to any employee who joined the Union prior to execution of a collective agreement (see Pet. App. B, 60), it was not a purchase of votes or a distortion of the election. Indeed, in *Savair*, the

Court specifically recognized that such an extended waiver offer would be valid. 414 U.S. at 274, n. 4. See also *B.F. Goodrich Tire Co.*, 209 NLRB No. 182.

Petitioner contends that the statement in the Union's leaflet that "Any worker in the plant at the time of the election will be exempt from an initiation fee!" (Pet. 12) is a "clear implication [of] * * * waiver of fees in exchange for support for the union" (Pet. 13). In the context of other statements made, however, the quoted language merely indicates that all present employees were covered by the offer; it did not condition the offer upon their joining the Union before the election. Cf. Pet. App. B, 60.

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

PETER G. NASH,
General Counsel,
National Labor Relations Board.

SEPTEMBER 1974.